TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 367.

MOSES HAAS, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 20, 1909.

(21,524.)

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1 The President of the United States of America to William Henkel, United States Marshal for the Southern District of New York, and to any person having custody of Moses Haas under the authority of said United States Marshal, Greeting:

We command you that you have the body of Moses Haas, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said Moses Haas is called or charged before the Circuit Court of the United States for the Southern District of New York held in the Post Office Building in the City of New York, County of New York, State of New York, on December 4, 1908, at 11 o'clock in the forenoon, to do and receive what shall then and there be considered concerning said Moses Haas, and have you then and there this Writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, the 30th day of November, 1908.

[SEAL.] GEO. C. HOLT, *J.*

JOHN A. SHIELDS, *Clerk.*

2 The foregoing Writ is hereby allowed.

Dated, November 30, 1908.

GEO. C. HOLT, *J.*

NASH ROCKWOOD,
378 *Broadway, Saratoga Springs, N. Y.,*
MAX D. STEUER,
115 *Broadway, New York City,*
Attorneys for Petitioner, Moses Haas.

Endorsed: United States Circuit Court, Southern District of New York. Moses Haas, Petitioner, vs. William Henkel, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York, Respondents. Writ of Habeas Corpus. Nash Rockwood, Saratoga Springs, N. Y., and Max D. Steuer, 115 Broadway, New York, Attorneys for Petitioner. Bail fixed at $5,000. G. C. H. Nov. 30, 1908. Defendant may remain in custody of his counsel for 24 hours to get bail. G. C. H., J.

3 In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of MOSES HAAS for Writs of Habeas Corpus and Certiorari.

MOSES HAAS, Petitioner,

vs.

WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York, Respondents.

To the Circuit Court of the United States for the Southern District of New York:

The petition and complaint of Moses Haas respectfully shows to the Court—

1. That Moses Haas, the person in whose behalf writs of habeas corpus and certiorari are hereby applied for, is a citizen of the United States and a citizen and resident of the Southern District of New York, in the State of New York.

2. That your petitioner is imprisoned and restrained of his liberty in the custody of William Henkle, United States Marshal in and for the Southern District of New York, and is now unlawfully and in violation of his rights under the Constitution and statutes of the United States detained in the custody of said Marshal in the City of New York, County and State of New York.

4 3. That your petitioner is so held and unlawfully restrained of his liberty by said Marshal without color and claim of authority of the United States by virtue of alleged orders of commitment or warrants issued by John A. Shields, Esq., United States Commissioner in and for the Southern District of New York, upon a complaint purporting to charge your petitioner with violation of the laws of the United States. A true copy of said commitment or warrant issued by said United States Commissioner is hereto attached and made a part hereof and marked "Exhibit 1," and is hereby referred to the same as if herein written at length.

That your petitioner has been so committed and is detained only under and by virtue of said alleged warrant or order of commitment and not by virtue of any judgment, decree, final order, process, or mandate issued by a court or a judge of the United States of America in a case where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of legal proceedings in such court, or by virtue of a final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such tribunal made in a special proceeding instituted in any cause, either a contempt proceeding or otherwise, or by virtue of an execution or other process issued upon such a judgment, decree, or final order.

4. That the cause or pretence of such imprisonment and restraint of your petitioner, according to the best knowledge and belief of your petitioner, is as follows, to-wit:

Your petitioner was heretofore and on or about the 24th
5 day of June, 1908, apprehended by the said William Henkle, United States Marshal, and taken before John A. Shields, Esq., said United States Commissioner, having an office at the Post Office Building in the City, County and State of New York, and was then and there informed that four indictments had been found against your petitioner by a Grand Jury of the Supreme Court of the District of Columbia, in and by which indictments your petitioner was charged with having committed the following criminal acts:

Indictment No. 26086.

An indictment found May 29, 1908, in the District of Columbia, charging your petitioner and Edwin S. Holmes, Jr., and Frederick A. Peckham with having conspired on the 31st day of May, 1905,

at the said District of Columbia with one Lewis C. Van Riper to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton crop report to be issued and published by said Department and Bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by certain means and methods and under the circumstances and conditions set forth and described in said indictment.

6 *Indictment No. 26087.*

Indictment found on May 29, 1908, in the District of Columbia, charging that on May 31, 1905, at the District of Columbia, your petitioner and Frederick A. Peckham conspired with Lewis C. Van Riper to commit an offense against the United States, that is to say: the offense of promising, offering and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the Government thereof, that is to say: to the said Edwin S. Holmes, Jr., associate statistician of the said Bureau of Statistics, as aforesaid, a sum of money to induce him, the said Edwin S. Holmes, Jr., to do certain acts in violation of his lawful duty, that is to say: to induce him, the said Edwin S. Holmes, Jr., unlawfully and in violation of his said duty as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him, as aforesaid, as such associate statistician, and in advance of the official issue and publication of the said cotton crop report which was to be issued in the month of June next ensuing, and in advance of the time when the matter and information contained in said cotton crop report could lawfully be made public, to furnish in so far as
7 in him the power lay to your petitioner, the said Peckham, and the said Van Riper the statistics, matter and information which were to be contained in said report, of which knowledge was, as aforesaid, acquired by said Edwin S. Holmes, Jr., in the performance of his duty as such associate statistician.

Indictment No. 26088.

This indictment contains eight counts which allege in substance as follows to-wit:

First Count.

That Theodore H. Price, your petitioner, and Edwin S. Holmes, Jr., are charged with *having* having conspired at the District of Columbia on May 31, 1905, to defraud the United States of and concerning its Governmental function in the matter of issuing and publishing the cotton crop report to be issued and published by the Department of Agriculture in the then next succeeding month of June.

Second Count.

That on the 15th day of November, 1904, and continuously and at all times between said 15th day of November, 1904, and the 5th day of July, 1905, and on said day last aforesaid and at the District of Columbia aforesaid, the said Edwin S. Holmes, Jr., Theodore H. Price, and your petitioner unlawfully conspired, etc. to defraud the United States in certain manner in said second count alleged.

8 *Third Count.*

That on May 31, 1905, Edwin S. Holmes, Jr., your petitioner, and Theodore H. Price conspired to defraud the United States by procuring Holmes to make untrue and inaccurate reports of the cotton crop report for the following month of June, to wit: June, 1905, by causing the report to state that there had been planted in cotton a greater number of acres of land than had in fact been planted.

Fourth Count.

That Edwin S. Holmes, Jr., your petitioner, and Theodore H. Price conspired on May 31, 1905, at the District of Columbia, to commit an offense against the United States "that is to say: the "offense of misconduct on the part of him, the said Edwin S. "Holmes, Jr., in his said office of associate statistician in the said "Department of Agriculture", in certain ways in said indictment alleged.

Fifth Count.

That on or before the 15th day of November, 1904, and continuously and at all times between said last mentioned day and the 5th day of July, in the year 1905, and on the said last mentioned day and at the District of Columbia aforesaid, and under the circumstances and conditions in the second count in said indictment set forth, and averred, Edwin S. Holmes, Jr., your petitioner
9 and Theodore H. Price conspired to defraud the United States in the manner set forth in said count of said indictment.

Sixth Count.

That on or before the 15th day of November in the year 1904, and continuously and at all times between that day and the 5th day of July, 1905, and on said last mentioned day and at the District of Columbia aforesaid, and under the circumstances and condition in the second count of said indictment set forth and averred, Edwin S. Holmes, Jr., your petitioner, and Theodore H. Price conspired, etc., to commit an offense against the United States, that is to say: "the "offense of misconduct on the part of him, the said Edwin S. "Holmes, Jr., in his said office of associate statistician in the said "Department of Agriculture, to be done and committed by him, the "said Holmes, by means of a certain alleged dishonest scheme in "said count of said indictment set forth.

Seventh Count.

That on May 31, 1905, at the District of Columbia, Edwin S. Holmes, Jr., your petitioner, and Theodore H. Price unlawfully conspired etc. to defraud the United States by means of certain alleged dishonest schemes.

10 *Eighth Count.*

That on May 31, 1905, at the District of Columbia Edwin S. Holmes Jr., your petitioner, and Theodore H. Price conspired to "commit an offense against the United States, that is to say: the "offense of misconduct on the part of him, the said Edwin S. "Holmes Jr., in his said office of associate statistician in said Depart-"ment of Agriculture by means of an alleged dishonest scheme."

Indictment No. 26089.

This indictment consists of two counts as follows:

First Count.

That on May 31, 1905, your petitioner and Theodore H. Price conspired to commit an offense against the United States, in substance the offense of bribing Holmes who is alleged to be an officer of the United States.

Second Count.

That on May 31, 1905, at the District of Columbia your petitioner and Theodore H. Price conspired to commit an offense against the United States, to wit: the offense of bribing Holmes who is alleged to be an officer of the United States.

In substance, said four indictments found in the District
11 of Columbia, as aforesaid, charged your petitioner with having conspired to violate the provisions of section 5440 as amended, and section 5451 of the Revised Statutes of the United States of America.

5. That at the time of the arraignment of your petitioner before said John A. Shields, said United States Commissioner, it appeared that on or about the 24th day of June, 1908, one Goldthwaite H. Dorr, an Assistant District Attorney for the Southern District of New York, had presented his informations or complaints in writing to said Commissioner, upon information and belief, averring in substance the finding of said indictments as aforesaid against your petitioner, annexing to said complaints alleged certified copies of said indictments Nos. 26086, 26087, 26088 and 26089. That thereupon, to wit: on the said 24th day of June, 1908, a warrant for your petitioner's arrest was issued by the said John A. Shields, Esq., Commissioner as aforesaid, upon the aforesaid complaints and the papers thereto annexed as above set forth, and upon no other papers or evidence, which said warrant came to the hands of the said Wil-

liam Henkle, Marshal as aforesaid, and he in obedience thereto arrested your petitioner and brought him before the said John A. Shields, Esq., Commissioner as aforesaid, and made return of said warrant endorsed thereon.

6. That thereupon your petitioner gave bail for his appearance and such proceedings were from time to time adjourned until
12 they came on for hearing on the 4th day of November, 1908, before said United States Commissioner, at which time your petitioner appeared in person with Nash Rockwood and Max D. Steuer, his counsel; the United States being represented by said Goldthwaite H. Dorr and Jesse C. Adkins, Esq.

7. That your petitioner thereupon applied for an examination into the causes of his restraint, in pursuance of the rights and privileges accorded to him by section 1014 of the Revised Statutes of the United States, and thereupon the United States Attorney in and for the Southern District of New York, for and on behalf of the United States, did there introduce in evidence to and before the said Commissioner in support of the averments of the complaints of said Goldthwaite H. Dorr certain papers purporting to be certified copies of the said alleged indictments mentioned and referred to in the said complaints, after which the United States rested its case without offering the testimony of any witnesses. I annex hereto as hereinafter stated a copy of the stenographer's minutes of said hearing before said Commissioner Shields, showing in detail the objections taken in my behalf to said proceedings and each and every part thereof. Such proceedings were from time to time adjourned and finally argued and submitted to said Commissioner, together with printed briefs, and said Commissioner on this 30th day of November, 1908, had rendered his decision, in substance, overruling my objections and has issued the warrant or com-
13 mitment aforesaid, and placed me in the custody and under the control of said United States Marshal and has thereby restrained me of my liberty as hereinbefore set forth.

I claim that said proceedings are illegal for the following reasons among others:

First. Said four indictments found against me in the District of Columbia, to wit: indictments Nos. 26086, 26087, 26088 and 26089 do not charge me with having conspired to commit or with having committed any crime or offense against the United States, or any crime or offense cognizable or punishable under or by virtue of the laws of the United States.

Second. The alleged crimes attempted to be set forth in said four indictments so found in the District of Columbia are barred by the Statute of Limitations, as shown by the record evidence introduced and admitted in evidence before said United States Commissioner Shields hereafter set forth.

Third. The said four indictments do not charge me with the commission of any crime or offense and there was, therefore, an entire absence of probable cause and said Commissioner was without jurisdiction to commit or detain me or to issue said warrant to said Marshal for my apprehension and detention as aforesaid.

Fourth. Said indictments, wherein they attempt to set forth and aver a crime against me, by alleging a violation of a rule or regulation of the Secretary of Agriculture, do not aver a statutory offense and, therefore, fail to charge me with the commission of any
14 crime in that respect.

Fifth. Said indictments, wherein they attempt to aver and state that Edwin S. Holmes Jr. was at any time an officer of the United States, within the meaning of that term, state what is not so—either in law or as a matter of fact—and I contend that said Holmes was not an officer of the United States at any time.

Sixth. That portion of said indictments which attempts to allege a violation of section 5451 of the Revised Statutes does not sufficiently or properly charge any violation of that section.

Seventh. If the crime of conspiracy to bribe had been entered into, as in said indictments set forth, said crime merged in the completed offense.

8. Indictments having been found against me in the Southern District of New York charging me with having committed precisely the same offense charged in the four indictments introduced in evidence by the Government before the Commissioner as aforesaid, (with the exception of five counts in indictment No. 26088), and a bench warrant for my arrest having been previously issued upon said indictment found in the New York jurisdiction, and I being actually enlarged on bail at the time of my arrest in said removal proceedings, it follows that there are two sets of indictments in existence—one set of four indictments in the District of Columbia, and one set of four indictments in the Southern District of
15 New York—each charging me with having previously committed the same offense, with the exception above noted, and I claim in this respect that a crime can be but once committed and completed, and that it was impossible for me, either as a matter of fact or of law, to have committed and completed the same crime in two jurisdictions at the same time, for which reason, coupled with the fact of my being actually in custody under and by virtue of a warrant of arrest issued upon the New York indictments, I claim that there was no probable cause to warrant an order committing me to the custody of the Marshal for removal for trial to the District of Columbia for an alleged crime upon which I had been previously indicted and arrested in the Southern District of New York, and for which I was actually in custody at the time of my arrest in these removal proceedings.

9. Said four indictments are defective in substance, as the same overt acts cannot be connected with the commission of different crimes.

10. The proceedings before Commissioner Shields did not confer jurisdiction upon him to commit your petitioner for removal for the following additional reasons:

First. The said complaints upon which the warrants were issued for the apprehension of your petitioner are upon information and belief, and not upon the positive knowledge of the affiant

Second. A bench warrant from the District of Columbia
16 was not filed with the complaints or information, so that there was no evidence before the said Commissioner at the

time of the issuance of the warrant for my arrest that I was wanted in the Washington jurisdiction.

11. For the reasons aforesaid I contend that said Commissioner was without jurisdiction to issue a warrant for my arrest and subsequent commitment, and that all of said proceedings before him were in violation of my constitutional rights and that I am illegally held and restrained of my liberty.

12. That I have been advised by my counsel, Nash Rockwood, and Max D. Steur, and verily believe that said four indictments found against me in the District of Columbia do not charge me with the commission of any offense whatever against the United States of America prohibited either by the common law or by any law or statute of said United States of America.

13. There was an entire absence of proof of probable cause of said alleged crimes before said Commissioner to warrant him in holding your petitioner to answer for the same or to detain and restrain him in his liberty as aforesaid.

14. That the detention of your petitioner is without authority of law and he is restrained in his liberty in violation of the Constitution of the United States, and any further proceedings in pursuance thereof, or the further detention or imprisonment of your
17 petitioner would be unlawful.

That said United States Commissioner had no jurisdiction to commit your petitioner to the custody of said United States Marshal for the reason that said pretended indictments were and are illegal as aforesaid, and there was no probable cause for believing or finding your petitioner guilty of any offense whatever.

15. That said Commissioner did not have before him in committing your petitioner any probable cause to believe your petitioner had committed the crimes sought to be charged against him or any other crimes against the United States. That said Commissioner had no jurisdiction or authority to order the arrest or commitment of your petitioner, and all of the alleged process under color of which your petitioner is restrained of his liberty is unauthorized, illegal and void.

16. That heretofore and on the 22nd day of August, 1905, indictments known as Nos. 24866, 24867, were returned to the Supreme Court of the District of Columbia against Edwin S. Holmes Jr., Frederick A. Peckham and your petitioner charging an alleged violation of section 5440 of the Revised Statutes of the United States as amended.

17. That on October 2, 1905, indictment known as No. 24907 was returned to the Supreme Court of the District of Columbia against Edwin S. Holmes Jr., Frederick A. Peckham and your petitioner, in substance charging the violation of section 5440
18 of the Revised Statutes of the United States.

18. That said three indictments so found in substance aver the same alleged conspiracy set forth in the four subsequent District of Columbia indictments of 1908, as hereinafter set forth.

19. Said indictments of 1905, averred a conspiracy with reference to the June 1905 crop report, that being the same crop report stated in the subsequent New York and Washington indictments to have

been the object of those conspiracies. For this reason I claim that said alleged criminal acts averred in the New York and District of Columbia indictments of the year 1908 are barred by the Statute of Limitations.

20. Heretofore and in or about the fall of 1905, I was arrested by virtue of a warrant issued upon a complaint based upon said 1905 indictment made to James Ridgway, Esq., United States Commissioner, and arraigned before said Commissioner for a hearing, which hearing was duly had and resulted in my discharge by said Commissioner Ridgway, his decision being to the effect that said indictment failed to charge me with the commission of a statutory offense, or of any offense for which I was legally accountable. Thereafter and on or about the 5th day of January, 1906, a complaint was laid before Hon. George C. Holt, United States Judge, by Henry L. Burnett, United States Attorney for the Southern District of New York, upon said indictment known as No. 24907, based upon
19 a bench warrant issued out of the Supreme Court of the District of Columbia for my arrest. I was thereupon apprehended and brought before said United States Judge Holt where a hearing was had resulting in my subsequent discharge. Said United States Judge Holt expressly finding that said indictment did not charge me with having committed an offense against the laws of the United States, nor any other offense, and that my removal to Washington should not be had.

It appears therefore that I have already been twice discharged, once by Commissioner Ridgway, and again by United States Judge Holt, upon indictments charging me with practically the same conspiracy set forth in the four subsequent New York indictments and the four subsequent Washington indictments.

21. Thereafter the trial of said Edwin S. Holmes Jr. upon said indictments, occurred in the District of Columbia and the jury disagreed and were discharged. Upon such trial one Lewis C. Van Riper was called by the Government and testified as a witness, his evidence being to the effect that the alleged conspiracy related to the June crop report of the year 1905, which is the same crop report alleged in the subsequent New York and Washington indictments to have been the object of the conspiracy.

22. On the same day that said indictments were found against me in the District of Columbia, four indictments for the same offense were found against me in the Southern District of New
20 York, and with the exception of the counts aforesaid, said New York indictments averred that on the 29th day of May 1905, I conspired in the Southern District of New York to commit the same crimes with which I am charged in the four Washington indictments. In other words, the four Washington indictments and the four New York indictments each charge completed crimes to have been committed within their respective jurisdictions on the same dates, which I contend is not only a physical but likewise a legal impossibility.

23. On or about said 29th day of May, 1908, a bench warrant was issued out of the United States Circuit Court for my apprehension and by virtue of the indictments found in the New York jurisdiction;

I was thereupon apprehended before Judge Chatfield and subsequently admitted to bail and discharged from the custody of the Marshal upon the approval of the same.

24. Subsequently I interposed four demurrers to said indictments which were argued before United States Judge Hough who thereafter overruled the same.

I also moved to quash said indictments found in the New York jurisdiction upon the ground that my constitutional rights were invaded when I was required to be a witness before the Grand Jury which returned the indictments. This motion was also argued before United States Judge Hough who denied the same.

25. Thereafter and on or about the 6th day of October, 1908, my counsel was served by Hon. Henry L. Stimson, United States Attorney for the Southern District of New York, with a notice of motion returnable at a stated term of the United States Circuit Court on October 12 for the consent of the said Circuit Court that the United States attorney for the Southern District of New York proceed with proceedings for my removal to the District of Columbia under and by virtue of said indictments found in the Washington jurisdiction. At the time that said motion was made I had been previously arrested as aforesaid, upon the indictments found in the New York jurisdiction for the same alleged crime and had been enlarged on bail as aforesaid, which bail was still outstanding at said time.

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26. Thereafter and on the 24th day of October, 1908, United States Judge Hough granted said motion and an order was entered thereupon to that effect. The proceedings before said United States Commissioner Shields were then proceeded with on November 4 as aforesaid.

I am further advised by my said counsel and verily believe that under and by virtue of Clause 3 of Section 2 of Article 3 of the Constitution of the United States and of the Sixth Amendment to the Constitution that I am entitled to be tried and can only be indicted and tried for any alleged offense against the laws of the United States in the State and District in which the offense or offenses which the indictment or indictments charge were committed. That the United States having procured indictments against me in the Southern District of New York charging me with having committed and completed the same crime in the Southern District of New York with which I am charged in the four indictments found in the District of Columbia and to have been committed on the same day, to wit: May 29, 1905, and having by virtue of said indictments caused my arrest previous to the Institution of any removal proceedings, should be required to try me, if at all, for said alleged crimes in the Southern District of New York where I reside. That I could not legally commit and complete the same crime in two different districts on the same day and that even if removed to the District of Columbia under and by virtue of said removal proceedings I could not be there legally tried for an offense committed in the Southern District of New York.

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27. Your petitioner further says that he is advised that under and by virtue of the said Articles of the Constitution of the United

States and by virtue of the Fifth Amendment to the Constitution of the United States, he is privileged from arrest and detention, and that he may not be deprived of his liberty under the process on the faith of which he is detained, save and except upon a charge that he has violated a law of the United States, and save and except thereof evidence before the officer issuing the said process sufficient to establish that there is probable cause to believe him guilty of the said charge, and that in the said indictments, which were practically the sole testimony offered by the Government before said Commissioner in said proceeding, is there any proof to sustain a
23 charge that your petitioner has violated any of the laws of the United States in the District of Columbia, nor is there any evidence to establish that there is probable cause to believe him guilty of any crime or offense against the United States.

I annex hereto and make a part of this my petition, the same as if herein written at length, copies of the following papers, which said copies disclose in detail the facts herein alleged:

Exhibit 2. First Washington indictment No. 24856, returned to the Court on August 22, 1905.
" 3. Second Washington indictment No. 24867, returned to the Court on August 22, 1905.
" 4. Third Washington indictment No. 24907, returned to the Court on October 2, 1905.
" 5. Opinion of United States Commissioner Ridgway discharging me upon said 1905 indictments and holding that the said indictments do not aver a crime.
" 6. Removal complaint of Henry L. Burnett presented to United States Judge Holt on January 5, 1906.
" 7. Bench warrant issued from the District of Columbia January 3, 1906, attached to foregoing removal complaint.
" 8. Warrant for my arrest issued by United States Judge Holt on the 5th day of January, 1906.
" 9. Opinion of United States Judge Holt to the effect that said indictment No. 24907 did not charge me with the commission of a crime and discharging me.
" 10. Findings of fact, conclusions of law and order discharging me signed by United States Judge Holt.

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Exhibit 11. Extracts from stenographer's minutes of the trial of the United States vs. Edwin S. Holmes Jr., being the testimony there given by Lewis C. Van Riper.
" 12. Fourth Washington indictments No. 26086 found May 29, 1908.
" 13. Fifth Washington indictment No. 26087 found May 29, 1908.
" 14. Sixth Washington indictment No. 26088 found May 29, 1908.
" 15. Seventh Washington indictment No. 26089 found May 29, 1908.
" 16. First New York indictment found May 29, 1908.

" 17. Second New York indictment found May 29, 1908.
" 18. Third New York indictment found May 29, 1908.
" 19. Fourth New York indictment found May 29, 1908.
" 20. Bench warrant issued by United States Circuit Court for the Southern District of New York May 29, 1908, for my arrest.
" 21. Recognizance to appear and answer after indictment, given June 1, 1908.
" 22. Recognizance to appear and answer after indictment, given June 1, 1908.
" 23. Demurrer interposed by petitioner to indictment against Price, Holmes and Haas.
" 24. Demurrer to indictment against Price and Haas.
" 25. Demurrer to indictment against Holmes, Haas and Peckham.

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Exhibit 26. Demurrer to indictment against Haas and Peckham.
" 27. Affidavit of Moses Haas on motion to quash, verified June 19, 1908.
" 28. Opinion of Judge Hough overruling demurrers.
" 29. Opinion of Judge Hough denying motion to quash.
" 30. Order of Judge Hough dated October 1, 1908, overruling demurrers and denying motion to quash.
" 31. Removal complaint of Goldthwaite H. Dorr presented to John A. Shields, Commissioner, June 24, 1908.
" 32. Warrant of John A. Shields, United States Commissioner for the apprehension of your petitioner, dated June 24, 1908.
" 33. Removal complaint of Goldthwaite H. Dorr dated June 24, 1908.
" 34. Warrant of John A. Shields, United States Commissioner, issued June 24, 1908.
" 35. Affidavit of Henry L. Stimson and Notice of Motion, dated October 6, 1908, for the consent of the Circuit Court that removal proceedings be proceeded with.
" 36. Affidavit of Moses Haas verified October 16, 1908, in opposition to said motion.
" 37. Decision of Judge Hough granting last named motion.
" 39. Order of Judge Hough granting last named motion.
" 38. Copy of stenographer's minutes before United States Commissioner Shields.

Wherefore, your petitioner prays that a writ of habeas corpus issue directed to William Henkle, Marshal of the United States for
26 the Southern District of New York, or to any person having your petitioner in custody under the authority of said Marshal, commanding them to produce the body of your petitioner before this court forthwith, together with the cause of such imprisonment and detention, and further that a writ of certiorari issue directed to John A. Shields, United States Commissioner in and for the Southern District of New York, in aid of the writ of habeas corpus aforesaid, re-

quiring said John A. Shields to return and certify to this court forthwith the cause of the imprisonment of your petitioner and true copies of all the proceedings, complaints, warrants, depositions, examinations, detentions, commitments, documentary evidence and record had before him for such action as may be proper in the premises, and that your petitioner be admitted to bail pending the hearing and determination of said matter.

Dated at the City of New York this 30th day of November, 1908.

MOSES HAAS,
Petitioner.

NASH ROCKWOOD,
378 *Broadway, Saratoga Springs, N. Y.*
MAD D. STEUER,
115 *Broadway, New York City,*
Attorneys for Petitioner.

27 STATE OF NEW YORK,
City and County of New York, ss:

Moses Haas, being duly sworn, says:

That he has read the foregoing petition and knows the contents thereof and that he believes it to be true.

MOSES HAAS.

Subscribed and sworn to before me this 30th day of November, 1908.

CHARLES C. LOCKWOOD, [SEAL.]
Notary Public, Kings County.

Certificate filed in New York County.

28 (Annexed to the foregoing Petition are Exhibits 2-39 inclusive. Exhibits 1 to 10 inclusive and 12 to 39 inclusive are contained in the removal proceedings before Commissioner Shields and appear *in extenso* in his return to the Writ of Certiorari granted on the prayer of the above petition, such Exhibits being as follows:

Exhibit 1, Commitments.

Exhibit 2, First Washington Indictment, No. 21,866, Aug. 20, 1905.

Exhibit 3, Second Washington Indictment, No. 21,867, Aug. 22, 1905.

Exhibit 4, Third Washington Indictment, No. 21,907, Aug. 22, 1905.

Exhibit 5, Opinion of U. S. Commissioner Ridgway.

Exhibit 6, Removal complaint of Henry L. Burnett.

Exhibit 7, Bench Warrant, issued Jan. 3, 1905.

Exhibit 8, Warrant for Arrest, Jan. 5, 1906.

Exhibit 9, Opinion of Judge Holt.

Exhibit 10, Findings of Fact and Conclusions of Law, signed by U. S. Judge Holt.

Exhibit 12, Washington Indictment No. 26,088.

Exhibit 13, Fifth Washington Indictment No. 26,087.
Exhibit 14, Sixth Washington Indictment, No. 26,088.
Exhibit 15, Seventh Washington Indictment No. 26,087.
Exhibit 16, 1st N. Y. Indictment May 29, 1908.
Exhibit 17, 2nd N. Y. Indictment, May 29, 1908.
Exhibit 18, 3rd N. Y. Indictment, May 29, 1908.
Exhibit 19, 4th N. Y. Indictment, May 29, 1908.
Exhibit 20, Bench Warrant, May 29, 1908.
Exhibit 21, Recognizance, June 1, 1908.
Exhibit 22, Recognizance, June 1, 1908.
Exhibit 23, Demurrer interposed to indictment against Holmes, et al.
Exhibit 24, Demurrer to Indictment against Price & Haas.
Exhibit 25, Demurrer to Indictment against Holmes, Haas & Peckham.

29 Exhibit 26, Demurrer to Indictment against Haas & Peckham.

Exhibit 27, Affidavit of Moses Haas.
Exhibit 28, Opinion of Judge Hough overruling demurrers.
Exhibit 29, Opinion of Judge Hough denying motion to quash.
Exhibit 30, Order of Judge Hough overruling demurrers.
Exhibit 31, Removal Complaint of Goldthwaite H. Dorr, June 24, 1908.
Exhibit 32, Warrant, dated June 24, 1908.
Exhibit 33, Removal Complaint of Goldthwaite H. Dorr, June 24, 1908.
Exhibit 34, Warrant of John A. Shields, June 24, 1908.
Exhibit 35, Affidavit of Henry L. Stimson and Notice of motion, October 6, 1908.
Exhibit 36, Affidavit of Moses Haas, October 16th, 1908.
Exhibit 37, Decision of Judge Hough granting last named motion.
Exhibit 38, Copy of stenographer's minutes before U. S. Commissioner Shields.
Exhibit 39, Order of Judge Hough granting last named motion.
Exhibit 40, Opinion, Commissioner Shields.

Exhibit 11 annexed to said petition is as follows:

30 EXHIBIT 11.

In the Supreme Court of the District of Columbia.

THE UNITED STATES
vs.
EDWIN S. HOLMES, JR.

Stenographer's Minutes, Book 8, Pages 839 to 946.

31 LEWIS C. VAN RIPER, a witness of lawful age, called by and on behalf of the United States, having been first duly sworn, testified as follows:

By Mr. BEACH:

Q. Will you state your full name?
A. Lewis C. Van Riper.
Q. And where do you live at present?
A. New York City.
Q. What is your occupation, Mr. Van Riper?
A. Operator in mines.
Q. Where?
A. In Goldfield, Nevada.
Q. Where were you living, Mr. Van Riper, and what were you doing in the years 1904-1905?
A. Living in New York, running the New York Mailing and Advertising agency at 108 Fulton Street.
Q. New York City, I presume?
A. Yes, sir.
Q. How long had you lived in New York City in 1904?
A. Since 1897.
Q. Are you acquainted with Frederick A. Peckam?
A. Yes sir.
Q. And with E. S. Holmes, Jr.?
A. Yes sir.
Q. And with one Moses Haas?
A. Yes, sir.
Q. Which one of them did you know first?
A. Mr. Holmes.
Q. You knew Mr. Holmes first?
A. Yes, sir.
Q. And whom did you next meet?
A. I met Mr. Haas after Mr. Holmes.
Q. When did you first see Mr. Holmes?
A. On the 7th of August, 1904.
Q. And how?
A. I was introduced to him by Mr. F. A. Peckham.
Q. Where?
A. At the Raleigh Hotel, Washington.
Q. When did you first know Mr. Peckam?
A. I met him about a year prior to that, in New York.
Q. What was the occasion of your coming to Washington?
A. Mr. Peckam asked me to come here.
Q. And how did he ask you to come; in what form?
A. He sent me a telegram on August 6th.

(A telegram was handed to the witness.)

Mr. BEACH (after a whispered conference with the counsel for the defendant): If your Honor please I was saying to Mr. Worthington that my recollection is that the representative of the Company has already testified that the original telegrams in the possession of his Company have been destroyed. If I am not clear about it, I would like to be corrected. I think that is the testimony.

Mr. BAKER: Yes, that is it.

Mr. WORTHINGTON: That is my recollection.

Mr. BEACH: It should have been if it was not.

Mr. WORTHINGTON: I suppose it was not the original that he delivered to this gentleman.

By Mr. BEACH:

Q. Where did you receive that telegram, Exhibit No. 1?

A. 108 Fulton Street.

(Counsel for the defendant requested that the answer of the witness be repeated in a louder tone.)

Q. Where did you receive it, Mr. Van Riper?

A. Well I don't remember exactly where I received it.

Q. Did you receive it here, or in New York?

A. I received it in New York.

Mr. BEACH: If your Honor please, this is laid as the first overt act. I will read it to the jury. "Postal Telegraph. Commercial Cable." Dated: "Washington D. C., August 5." I think it is—"5" or "6."

Mr. ADKINS: "August 6."

Mr. BEACH: The "6" is a little indistinct. (Exhibiting telegram to counsel for the defendant.)

Mr. WORTHINGTON: Oh, that is "6."

Mr. BEACH: I think so, yes. (Reading) "L. C. Van Riper room 1001, No. 20 Broad Street, New York. Come to Washington at once. Wire me Raleigh Hotel time of arrival. Don't advise Mrs. P. Fred. 1:19 P. M."

By Mr. BEACH:

Q. What was the occasion of his sending that telegram, if you know, Mr. Van Riper? Why did he telegraph you?

A. He had asked me if I would come down if he sent for me before he left New York.

Mr. BEACH: Very well.

By Mr. BEACH:

Q. What took place at this interview, Mr. Van Riper, after Mr. Peckam had introduced you to Mr. Holmes?

A. Well Mr. Peckam said "This is the man I told you about that is in the Department, and he is willing to show you that he can——

Mr. LESTER: If your Honor please we cannot hear the witness.

Mr. WORTHINGTON: We might just as well not be here, your Honor, we cannot hear a word that is said.

(The court requested the witness to speak louder hereafter, and the uncompleted answer was read aloud by the stenographer.)

The WITNESS (continuing his answer): "That he can furnish advanced figures on cotton crop reports."

By Mr. BEACH:

Q. What had he told you about Mr. Holmes before this introduction?

Mr. WORTHINGTON: I object to that your Honor on the ground that Mr. Holmes cannot be affected by it unless he was told what he had been told.

Mr. BEACH: I think we will show——

The COURT: Suppose you go on with the conversation, and we will see. Perhaps I may not need to pass on that.

Mr. BEACH: Yes sir.

By Mr. BEACH:

Q. Now just state the conversation there in this room after the introduction by Mr. Peckham of you to Mr. Holmes.

A. Mr. Holmes said that he was associate statistician, and showed me a bulletin with his name printed on it.

Q. Who showed you this?

A. Mr. Holmes.

Q. Well, continue. What further did he say?

A. He said that he could not only—he said that he practically made the figures up; that Mr. Hyde took his estimate always, and that he could always tell, the day before the report was issued, what the figures were going to be.

Q. Who was Mr. Hyde?

A. Mr. Hyde was the statistician at that time.

Q. Well, continue.

A. Well he went on to say that he had been furnishing these figures in advance to a large New York operator for some time and that he at that time had $55,000 in cash in his safe deposit vault that he had obtained from that source.

Q. Proceed and give us the substance of that talk as well as you can.

A. He was very friendly to Mr. Peckham, and was willing to furnish him the figures in order to help Mr. Peckham.

Q. Go on. What, if anything, did he say as to an approaching wheat report?

Mr. WORTHINGTON: I object, your Honor, to this leading style of examination until the witness has said that he has said all he can recall of the conversation.

Mr. BEACH: No; I do not think that he has said, that he has said all he can remember.

Mr. WORTHINGTON: Has he said that?

Mr. BAKER: No; he has not said so.

The COURT: Let him state it all until he has exhausted his recollection.

Mr. WORTHINGTON: Now I will ask the District Attorney that he carefully observe that rule in all the testimony of this witness as to conversations.

Mr. BEACH: Thank you; yes. We shall try to do that.

Mr. WORTHINGTON: Because after the question has been asked and objected to, the harm has been done.

The COURT: That is true. Of course the witness is testifying about an important part of the case, and the rule is pretty strict.

Mr. BEACH: I am quite sure that Mr. Worthington will under-

stand that I do not mean intentionally to lead or suggest anything to the witness.

Mr. WORTHINGTON: I do not suggest that for a moment, Mr. Beach; but the inquiry is just the same as if you did do it.

Mr. BEACH: I think you will find that this will come out in due course properly.

By Mr. BEACH:

Q. State all that happened, if anything further in addition
34 to what you have told us about.

A. I said that if he could furnish me with the proof that he could get these figures in advance, I would be willing to operate and do the right thing by Peckham; and he then wanted to know what division I would make. I told Peckham I would give him two-thirds of the profits. He said that he was willing to prove to me that he could give me the exact figures, and that he had been furnishing them to a New York party through another man, and arranged that if I would come down on the 9th he would give me the advance figures on the report that was to be issued on the 10th.

Mr. WORTHINGTON: I object, your Honor, to any reference to the other crop reports in this case.

The COURT: Being a part of the same conversation, and apparently said for the purpose of effectuating the object of the meeting I think it cannot be excluded. Of course the jury will understand that that is not one of the charges here.

Mr. WORTHINGTON: The only charge here is about cotton.

The COURT: The only charge here is about cotton.

Mr. WORTHINGTON: I would like to have an exception noted to it your Honor.

The COURT: An exception may be noted.

By Mr. BEACH:

Q. About how long were you engaged in this interview, Mr. Van Riper?

A. Oh, I should say half or three quarters of an hour.

Q. Is that all the conversation that happened there?

A. Mr. Holmes then arranged to report to Mr. Peckham, and Mr. Peckham was to report to me; but on account of Peckham going away, having a western engagement, he asked me to come down on the 9th if Mr. Holmes would agree to see me; so I came down on the 9th.

Q. What had Mr. Peckham told you of Mr. Holmes before Mr. Peckham introduced you to Mr. Holmes?

Mr. WORTHINGTON: I object to that, your Honor, on the ground that Mr. Holmes cannot be affected by anything of that kind unless it was reported to Mr. Holmes or he was in some way advised of it.

Mr. BEACH: If your Honor please, I simply want to show that he told Mr. Van Riper in substance just what Mr. Holmes confirmed at this meeting.

Mr. WORTHINGTON: That does not remove my objection.

The COURT: Mr. Peckham was present, as I understand it. Mr.

Van Riper says to Mr. Holmes: "Mr. Peckham has told me so and so," and Mr. Peckham does not contradict it. I do not see how you could add anything to it by putting in anything as to whether Peckham had or had not told him so before.

Mr. BEACH: My attention is called to the further fact that the introduction is laid as one of the overt acts, too. The undertaking was that they would procure somebody such as Van Riper and bring them together for the purpose of the joint operation on the information that Holmes would give out in advance of the crop report.

35 The COURT: Has he not testified that he came there by request of Mr. Peckham?

Mr. BEACH: Yes sir.

Mr. WORTHINGTON: They put the telegram in.

The COURT: That seems to cover that point.

By Mr. BEACH:

Q. Did anything further happen in that conversation, Mr. Van Riper?

The COURT: Will you point me to the clause in the indictment in support of which you have just offered this testimony? You may go on.

(The pending question was read aloud by the stenographer.)

A. Except that it was arranged that I was to come down on the afternoon of August 9th to meet Mr. Holmes at the Willard.

By Mr. BEACH:

Q. Before we come to that date, what became of you and what became of Mr. Peckham?

A. Mr. Peckham went west to Arizona.

Q. What did you do?

A. I went to New York.

Q. Do not answer this question until Mr. Worthington has had an opportunity to object. Have you told everything that you remember as passing between you three on that occasion?

Mr. WORTHINGTON: I do not make any objection to that of course.

Mr. BEACH: I am going to follow it of course with another question.

Mr. WORTHINGTON: Let us see what he says in reply to that.

A. Everything of importance that I remember.

Mr. LESTER: What is that?

The WITNESS: Everything of importance.

By Mr. BEACH:

Q. Now, do not answer this question until Mr. Worthington has had an opportunity to object to it; or if Mr. Worthington prefers I will state it to him quietly.

Mr. WORTHINGTON: I suppose, from what I know of your Honor's rulings heretofore in similar circumstances, you will now allow him to ask a leading question, or to call his attention to something that the District Attorney claims he has forgotten?

The COURT: Yes; just suggest the subject.

Mr. WORTHINGTON: I should think it would be sufficient to suggest the subject to him, without putting the words in his mouth.

Mr. BEACH: I have no idea of putting the words in his mouth.

Mr. WORTHINGTON: I mean, you should ask the question with reference to a certain topic, instead of asking whether such and such a statement was made.

By Mr. BEACH:

Q. What if anything was said as to information being furnished some one else by Mr. Holmes?

A. Mr. Holmes said he had been furnishing information to Theodore H. Price of New York.

Q. And who was he if you know?

A. A cotton operator of New York.

Q. And in what way? Do not answer this question until Mr. Worthington has a chance to object.

Mr. WORTHINGTON: I do not see, your Honor, exactly why so many efforts are made to bring in the name of Mr. Price, or
36 what difference it makes whether Mr. Holmes did or did not say he had been giving information to somebody else.

Mr. BEACH: We think it makes a great deal of difference.

The COURT: It is a part of the conversation, and apparently, (assuming this witness's statement to be true) was used for the purpose of convincing him that he could do what he said he could. I do not suppose that he can carve out any part of it.

By Mr. BEACH:

Q. In what way was that information being furnished?

Mr. WORTHINGTON: Ask him what he said about it.

A. Through another party. He did not mention the name at that time.

Q. You say that he did not mention it at that time. Did he subsequently mention the name of this party?

A. Yes sir.

Mr. WORTHINGTON: Who did—Holmes or Peckham, or who was it subsequently mentioned it?

Mr. BEACH: Holmes.

Mr. WORTHINGTON: You asked him "did he subsequently mention it"?

Mr. BEACH: I asked him of course, about Mr. Holmes, because he was referring to what Mr. Holmes was telling him.

By Mr. BEACH:

Q. Who was that party?

A. Moses Haas.

Mr. WORTHINGTON: Of course I object to that. The District Attorney evidently did not understand me. Mr. Beach, the witness may be speaking from what Mr. Holmes said to him or from hearsay, as far as that answer goes.

By Mr. BEACH:

Q. Who did Mr. Holmes say was the party that he was furnishing this information through?
A. Moses Haas, of New York.
Q. And did Mr. Holmes say who he was?
A. He did later.
Q. What did he say about him?
A. Well, he introduced me to him later.

Mr. BEACH: I will have to put a rather direct question here, and I will state it to you Mr. Worthington, before I state it orally, if you prefer?

Mr. WORTHINGTON: No; I do not care about that. I object to leading questions of this witness.

Mr. BEACH: It is about this same conversation; I simply want to direct his attention to something. I do not want to do anything that Mr. Worthington objects to, and I am perfectly willing to tell him what the question will be.

Mr. WORTHINGTON: I understand his Honor's rule to be that you may now ask leading questions, when you have exhausted him in that way; and all I can do about it is to call attention to it, indicating that he has to be told what it is before he remembers it.

By Mr. BEACH:

Q. Was anything said to you at this conversation by Mr. Holmes as to keeping you advised of the advices given to Mr. Price?
A. Yes sir; there was.
Q. Well what?
37 A. Why, Holmes said that he would keep me advised through Peckham, of what Price's operations were from time to time; he could find that out through Mr. Haas.
Q. When did you next see Mr. Holmes after this interview?
A. On August 9th.
Q. And where?
A. At the Willard Hotel, Washington.
Q. Tell us what happened at that interview?
A. I met Mr. Holmes in the lobby or office of the Willard, and we went down to the Café and sat down to a table, and he said: "Now put this down. This will be the figures on the wheat report tomorrow." So I took a pocket check-book and wrote it down on the fly leaf of that check boom, just as he gave it to me.

Mr. WORTHINGTON: I do not want to be repeating objections. I do not know that your Honor has ruled that this wheat crop business could be referred to; but I understand it was admitted the other time because it was part of the same conversation in which the matter of the cotton was discussed. It now seems to be an entirely independent transaction, not in any wise referred to in this indictment as part of any alleged conspiracy or as any overt act.

The COURT: If it was before the matter was completed, before the arrangement was completed between them, I think it would be admissible.

Mr. WORTHINGTON: The witness has not given any indication in what he has said yet your Honor, that there was anything left incomplete after the alleged interview of August 6th.

The COURT: I do not know whether they closed the arrangement at that time or not.

Mr. BEACH: It is proof of his ability to give advance information.

Mr. WORTHINGTON: He stated it was closed then, and stated what the division was to be.

Mr. BEACH: It was proof of his ability to do what he said he could do that is all.

The COURT: I understood he said at that interview that he would demonstrate to him that he could do it; and this was a sort of condition of the arrangement being completed, I understood him to say. Is that your view of it.

Mr. BEACH: Yes, sir; that is the purpose of it.

The COURT: I do not think it could be excluded then.

Mr. WORTHINGTON: I would like to have an exception to it now.

The COURT: It will be under the same exception.

Mr. WORTHINGTON: There is another objection I would like to make at this point. I understand something was reduced to writing at that time. I object to any——

Mr. BEACH: We are going to show it to him.

Mr. WORTHINGTON: Very well.

(A paper was handed to the witness.

By Mr. BEACH:

Q. Without saying what is on that paper what is it?

A. That is the fly-leaf from my check book that I wrote the figures on.

Mr. BEACH: That is Exhibit 24.

(The paper above referred to was exhibited to counsel for the defendant.)

Mr. WORTHINGTON: Very well.

Mr. BEACH: Do you object to that?

Mr. WORTHINGTON: We make no objection to it in view of his Honor's ruling, as covered by his ruling.

38 By Mr. BEACH:

Q. Now read that and tell us what it is.

Mr. WORTHINGTON: He has already stated that Mr. Holmes made that memorandum, has he?

Mr. BEACH: He made the memorandum in Mr. Holmes' presence.

Mr. LESTER: Who made the memorandum?

Mr. BEACH: He did himself in Mr. Holmes' presence.

By Mr. WORTHINGTON:

Q. Did you say that you made it or that Mr. Holmes made it?

A. I made it.

Q. Oh, you made it.

A. Yes sir.

By Mr. BEACH:

Q. In his presence?
A. Yes sir.
Q. And from whom did you get the data that you put down there?
A. From Mr. Holmes.
Q. Now read that memorandum and explain it.
A. "W., 12.3 per acre. 333 million bushels."
Q. Explain that: what does that mean?

Mr. WORTHINGTON: If there was any explanation made at that time, your Honor, he can give that, I submit, but not otherwise.

By Mr. BEACH:

Q. That was a memorandum of what?
A. Of Winter wheat yield which was to be 12.3.

Mr. WORTHINGTON: I still object, your Honor, and I insist that this witness shall state what Mr. Holmes said to him. He cannot make a memorandum of his own and bring that here and then impute anything to Mr. Holmes about the memorandum unless this is something that Mr. Holmes said, or that he said to Mr. Holmes.

The COURT: That is all true.

By Mr. BEACH:

Q. What did Mr. Holmes say?
A. Mr. Holmes said that the report would show winter wheat yield per acre 12.3, a total of 333 million bushels; a spring wheat condition of 87.5; and that accompanying this report would be a statement to the effect that rust had made its appearance in a number of counties in the northwest, but at this time reports were incomplete, and it was impossible to estimate the damage on that account. He also said that last year the spring wheat condition for that month was 93.7, and that the last year's winter wheat yield was reported at 410 million bushels in that year, and that the final report had shown a yield of 399 million bushels. He also said that if I wanted to communicate with him personally, to address him at box 166, Washington.
Q. What did you do after that interview?
A. I went back to New York.
Q. And then what happened?

39 Mr. WORTHINGTON: I object to this, unless it is something that Mr. Holmes had something to do with. He cannot go off and make evidence against Mr. Holmes by anything he did, your Honor.

Mr. BEACH: This will be brought back to Mr. Holmes. He reports what he does to Mr. Holmes later on, as I understand it.

Mr. WORTHINGTON: Then I submit that the proper evidence is the report and not what he says he did.

The COURT: The question is what the indictment charges on that subject.

Mr. WORTHINGTON: It does not charge anything about wheat; it is confined exclusively to cotton.

Mr. BEACH: It is charged that he was able to give out this information.

The COURT: Are you now asking about wheat?

Mr. BEACH: Yes sir; I was asking what he did as the result of this interview.

The COURT: Of course that is so broad that I cannot say whether the answer will be admissible or not.

Mr. BEACH: My inquiry is what use he made of this information.

The COURT: Information as to what?

Mr. BEACH: This information given here.

The COURT: As to the wheat?

Mr. BEACH: Yes; what the report would be the next day. As I understand, we are to bring that back to Mr. Holmes.

The COURT: That would not necessarily make it admissible, because there is no charge about that. I think you would be—or perhaps I ought not to state it to the jury. If you will step to the bench I will tell you what I think about this. (The following proceedings, until otherwise stated, took place at the bench out of the hearing of the jury.)

The COURT: I supposed you were going to show that when the report came out he compared it and found that it was——

Mr. BEACH: That he operated on it, and that they then entered into the other deals in cotton. I think there was a loss on that deal which was made up in another deal. This deal was taken account of in the subsequent transactions between the parties.

The COURT: Did Holmes call his attention to the fact that his forecast on the wheat report was correct, and did they then and thereupon close the other arrangement?

Mr. BAKER: Yes; we are going to show that they went ahead and treated it as closed.

Mr. BEACH: We have already the report in evidence, which confirms this, as I understand it.

The COURT: Now, to show that this condition was complied with, that he should convince him that he could forecast the reports, would not require any proof that he operated, but only that the figures corresponded.

Mr. BAKER: I say, your Honor, that this is admissible on a broader ground than it has been offered on, and that is that any conspiracies in regard to crops that were entered into between this witness and Mr. Holmes and Mr. Peckham are admissible in this case.

Mr. BEACH: Along about this time.

Mr. LESTER: If your Honor please, in the two former indictments there was some reference made to operating in wheat. Those were afterwards carefully eliminated from this indictment.

Mr. BEACH: There was nothing in the other indictment about that.

Mr. LESTER: Yes; there was something about wheat, and it was cut out, and we had no notice whatever that anything about wheat was to be brought out. By comparison of this indictment with the other we found that to be the case. There is absolutely nothing concerning wheat here at all in this indictment.

Mr. WORTHINGTON: (after some remarks which the stenographer

could not hear): I understand that what is offered here differs from such offenses as passing counterfeit money. When a man who is charged with passing a counterfeit bill passes another of the same denomination, it calls for explanation; but I do not see how the fact that a man is charged with a conspiracy to furnish information in regard to cotton would make it competent to show that he entered into a separate and independent agreement to furnish advance figures on wheat or anything else.

The COURT: What is your theory—that it shows relations?

Mr. BAKER: That it shows the relations of the parties. We had the same question here in the case of the United States vs. Green, and we proved an entirely independent conspiracy, not connected, as this is, with the immediate conversations in regard to the cotton deal.

The COURT: But you state also that it entered into their computations?

Mr. BAKER: It entered afterwards into their computations.

The COURT: And was treated as a part of the other matter.

Mr. WORTHINGTON: What would be competent, then, would be to show what was reported to Holmes, and what took place. We come back to what was said the other day—that this is a charge of agreeing to give out information. That is the conspiracy. It does not make any difference whether they made money or lost it, except as it bears on that proposition. So that it is utterly immaterial whether, in the cotton deals, they made money or lost money. It is a thousand times farther away to show that he made or lost money in something else.

The COURT: They went into it to make money, I suppose.

Mr. BEACH: These different deals, if your Honor pleases, are all part of the object of the conspiracy. Our theory is that Peckham was to get Van Riper or Haas or somebody else, and that they would operate jointly on the information that Holmes gave out. In the case of this deal of August 10th, in the first place this man was going to "make good"—in other words, to show that he could do this thing, as a result of which they went into the wheat deal. Now, we further will show that he operated on that information on the wheat market, and losing, deducted that loss from the next deal, which [illegible] was in cotton, and which was a profitable one. It is all a sequence and a series of the joint operations of these people.

The COURT: Do you claim that the subsequent operations were gone into by these parties in furtherance of a conspiracy by reason of the results of the first operation, so that it is necessary to show what those were to show that they went on, that they made some money and then went on?

Mr. BAKER: Yes, sir; there is another thing that we want to show besides this question of making money by this witness. We want to show that he showed these figures to somebody, so as to corroborate his testimony that he got them and had them before the cotton report—to corroborate the testimony of Mr. Rogers. He is the man who saw this memorandum.

Mr. WORTHINGTON: This memorandum?

Mr. BAKER: A memorandum similar to this.

Mr. WORTHINGTON: I was going to say that the memorandum Rogers testified about was one that was made in his presence.

The COURT: I think it is admissible, the way you state the matter; and I will let you put it in.

(The proceedings from this point on occurred in the hearing of the jury).

(The last two questions and the answer to the first question were read aloud by the stenographer, as follows:)

"Q. What did you do after that interview?

"A. I went back to New York.

"Q. And then what happened?

By Mr. BEACH:

Q. Now, go on, Mr. Van Riper?

A. On the next day I went to the office of C. G. Gates & Company in the Waldorf, and met Mr. Rogers, the manager; and I wrote out a memorandum and put it in an envelope and asked him to put his name on it and put the time of day on it, and put it in the safe, which he did.

Q. What was it you wrote out?

A. The figures on this report as they had been given me by Mr. Holmes.

Q. Then what else did you do?

A. I sold a few thousand bushels of wheat.

Q. You did what?

A. Sold a little wheat. I mean, bought a little wheat.

Q. How much?

A. Not very much.

Q. With what result?

A. Well, eventually it was closed out with a small loss.

Q. How did this information, these figures, which as I understand Mr. Holmes gave you on the afternoon of August 9th, compare with the report which came out the next day?

Mr. WORTHINGTON: I object to that, your Honor, because the report must speak for itself. It is in evidence here.

42 Mr. BEACH: Well, we have that.

Mr. WORTHINGTON: It speaks for itself whether it is in evidence or not. All this about the wheat comes under the same ruling and exception, I suppose, your Honor.

The COURT: It may be considered under exception.

Mr. ADKINS: Exhibit 24 shows wheat 12.3 per acre, or 333 million bushels. The condition of spring wheat, 87.5. The report shows that "preliminary returns indicate a winter wheat crop of about 333,400,000, or an average of 12.3 bushels per acre as contrasted with 12.3 bushels of last year as finally estimated." I am still reading from the report. "The average condition of spring wheat on August 1 was 87.5 as compared with 93.7 last month."

There is a note in this report after the figures I have already read: "Rust has made its appearance in a number of counties in the

northwest; but except as to South Dakota it is chiefly in late or supplemental reports that reference is made to it, and such reports being somewhat conflicting in character, it is evidently too early to estimate definitely the extent of the damage resulting from it."

The note in exhibit 24 is——

Mr. WORTHINGTON: Exhibit 24 has been read once; has it not?

Mr. BEACH: We were comparing it with the report.

Mr. WORTHINGTON: I submit, your Honor, that the time for comparing it has not come yet. There is no use in reading them twice.

The COURT: You may read them for purposes of comparison, if you wish. It will do no harm.

Mr. ADKINS (reading): "Rust made its appearance in number of counties N. W. Somewhat conflicting in character. Impossible to estimate damage at this time."

Mr. WORTHINGTON: We would like to have that report copied in full in the record.

Mr. ADKINS: Have you not got copies of these?

Mr. LESTER: No; we have never heard of that report before.

Mr. ADKINS: This whole book has been put in evidence.

Mr. LESTER: We did not understand it was put in evidence except as to cotton crop reports.

The COURT: That has been read; it will be treated, of course, as in evidence.

Mr. WORTHINGTON: Well, we should like to understand that, your Honor. We do not understand that everything in that book has been in evidence. The book has been identified, and is here, so that without any further proof either side can offer anything in it.

The COURT: I think that is correct.

Mr. BAKER: If your Honor pleases, we had the book gone over by a witness identifying Holmes' signature to all the reports, and we offered the book for the purpose of showing Holmes' duties down there, and his knowledge, as could be argued from that book; and of course the whole book for that purpose is in evidence.

The COURT: For the purpose of showing that he signed such reports as he did sign; to show how he acted, what place he held, what he knew about things—yes.

Mr. WORTHINGTON: There is no objection to its being offered in evidence for that purpose.

The COURT: I will make one suggestion here, in view of your offer. Of course it is not merely the fact that the figures in the report did correspond with the forecast, but that he found out that they did. You will have to show that in order to make the offer good, I think.

By Mr. BEACH:

Q. Did you see the wheat report of August 10th, 1904, when it was published?

A. I saw the newspaper accounts of it.

Q. Did you compare it with the memorandum that you have just referred to?

A. Yes sir.

Q. And with what result?

A. It was exactly the same.

Q. After giving this slip to Mr. Rogers, was there anything further that passed between you and him in reference to it?

A. Not until after the report was published.

Q. Then what happened?

A. I had him take it out and open the envelope and compare it with the published reports.

Q. Did you have any further dealings with Mr. Holmes after this wheat report?

A. Yes sir.

Q. How did you deal with him—personally, or by correspondence, or in what way?

A. I had some letters from him during the month of August.

Q. How many?

A. Three I remember of.

Q. (Handing paper to witness.) I hand you exhibits 2 to 7, inclusive, and ask you what they are?

Mr. WORTHINGTON: Are you putting in now only the letters which he says Mr. Holmes wrote him?

Mr. BEACH: Yes—the letters and the envelopes.

By Mr. BEACH:

Q. What are those?

A. They are letters from Mr. Holmes.

Mr. BEACH: I offer these in evidence and propose to read them one after the other.

Mr. WORTHINGTON: I suppose it would be well to go through the usual form of proving Mr. Holmes' handwriting.

Mr. ADKINS: That has already been done.

Mr. WORTHINGTON: That has been done by somebody else?

Mr. ADKINS: Yes.

By Mr. BEACH:

Q. Do you know the handwriting of Mr. Holmes?

A. Yes sir.

Q. Are those exhibits that I have shown you in his handwriting?

A. They are.

Q. And received by you at the place to which they are addressed?

A. Yes sir.

Mr. BEACH: Exhibit 2, gentlemen, is an envelope marked "Personal," addressed "Mr. L. C. Van Riper, 108 Fulton Street,
11 New York, N. Y." The postmark is "Washington, August 18, 12:30 P. M., 1904."

I will explain to you, gentlemen of the jury, that these are just exhibit marks for the stenographer's identification. The letter itself reads as follows:

"AUGUST 18, '04.

"DEAR MR. VAN RIPER: Other parties have changed plans "slightly, and I think it advisable for you to know about it. Can't

"you come here on Saturday night or Sunday? If not I might be "able to go to New York Saturday afternoon. Write me on receipt "of this, and if you decide to come here tell me when to meet you "and where.

Yours, H."

By Mr. BEACH:

Q. What was meant by the opening sentence—"Other parties have changed plans slightly, and I think it advisable for you to know about it"?

Mr. WORTHINGTON: I object, your Honor, because he could only know what was meant by something that happened before, or something Mr. Holmes said to him. He is not a mind reader, I suppose?

Mr. BEACH: If your Honor pleases, in spite of Mr. Worthington's witticism, we understand that the defendant undertook (and I think I recite the evidence properly this morning) to keep Peckham or Haas or both of them advised about somebody else.

The COURT: I understood that the jury might infer that this referred to that, of course. But I hardly think that he could say so. If Mr. Holmes said anything about this, either before or after, he may state what Mr. Holmes said about it. If he talked with Mr. Holmes about that statement in the letter, of course he can state what was said about it.

Mr. BEACH: I understand the situation to be, if your Honor pleases (and I want to be corrected if I am in error) that they had already talked about certain other parties, and I am asking him now what this refers to.

The COURT: Yes; that is just what is objected to, and what I am a little afraid of. Perhaps you had better find out first whether Mr. Holmes ever told him or ever referred to this clause afterwards, or whether there are any circumstances that he can tell us that would enable the jury to say who was referred to.

By Mr. BEACH:

Q. Do not answer this question until Mr. Worthington has an opportunity to object. Had anything been said between you and Mr. Holmes as to the plans of anybody?

A. Yes sir.

Q. What?

A. He told me that Price's plans were to buy cotton during the latter part of August in anticipation of a bullish crop report in September, and he promised to keep me advised as to their operations.

Q. And when was that conversation, Mr. Van Riper?

A. This was the 7th of August.

15 The COURT: That is, whether there had been any arrangement between them as to any other persons.

Mr. BEACH: If your Honor will allow me I will have the stenographer read your question.

(The stenographer read aloud the remarks of the court.)

By Mr. BEACH:

Q. Were there any persons other than Mr. Price whose plans were to be kept track of?

A. No, sir.

Q. What did you do after getting this letter, if you recall; what action did you take on that letter?

A. I dodn't do anything.

Q. I now hand you exhibits No. 4 and 5 and ask you if they are in Mr. Holmes' handwriting, and whether they were received by you at the place and address named?

A. They are.

(Exhibits No. 4 and 5 are in the words and figures following towit:

"4" (an envelope) "personal Mr. L. C. Van Riper 108 Fulton St. New York, N. Y." (Post marked) "Washington, D. C., Aug. 21, 1904, 7:30 P. M.

"5"

AUG. 21, '04.

DEAR MR. VAN RIPER: Yours received. That matter can wait a few days. Better have P. come as I can't get away before Saturday afternoon. Just getting over a bad chill. Hope to be O. K. tomorrow.

Yours, H.

You got my initials wrong on last letter."

By Mr. BEACH:

Q. What was the matter referred to here by "that matter can wait a few days"?

Mr. WORTHINGTON: I object to that on the same ground that I objected to his attempt to read Mr. Holmes' mind in the other case.

The COURT: I think that would be a matter of fact probably, and at least, if he acted on these letters his understanding of what they referred to would be admissible.

Mr. WORTHINGTON: I would respectfully submit that that would be a great injustice to the defendant. He is bound if he wrote the letter, by what he said in it; but what it may have conveyed to somebody else who received the letter and who may have conceived that it meant something else and acted upon it, would not in any way affect the defendant. If there is anything that has taken place between this witness and Mr. Holmes, it would help to enlighten the matter.

The COURT: What is the clause you are asking about?

Mr. BEACH: The clause "that matter can wait a few days."

Mr. WORTHINGTON: Your Honor will remember that this was August 21st and that at that time there was nothing being done in regard to crop reports.

The COURT: It says "your letter received", and that would of course refer to a matter in that letter written by him. He can state the matter in his letter and what he has written about.

By Mr. BEACH:

Q. What other matter was there between you and Holmes than what you have already told us?

Mr. WORTHINGTON: I object to the form of that question
16 because he has not testified there was any other matter.

The COURT: What if any other matter——

Mr. BEACH: The witness has come to a point where he says that he communicated with Holmes about a certain matter they had in mind. I am reading these letters to show what communication was had between them and what actually passed in accordance therewith, and I come now, in the order of correspondence, to the second letter which acknowledges a letter from Van Riper and refers to "that matter" as being a matter that "can wait a few days". I am asking now what that matter was?

The COURT: I think you would have the right to show what he had written him in a letter to which this is a reply, because apparently the jury might think it referred to what he had written him in that letter.

By Mr. BEACH:

Q. What if any letter did you write Mr. Holmes after the receipt of the first letter if you know?

A. I don't remember the contents. I remember I wrote him a short note in reply to it.

The COURT: The question is what it was about. Do you know what it related to—not the exact wording of it or any thing of that sort?

A. It related to operations in the market.

By Mr. BEACH:

Q. It is suggested to me that I ask you if there was any other matter between you and Mr. Holmes?

A. No, sir.

Q. In the next sentence it says: "Have P. come, as I can't get away before Saturday afternoon." What does that mean?

Mr. WORTHINGTON: I make the same objection. It is strange Mr. Beach cannot conform to your Honor's ruling about this.

Mr. BEACH: I am trying to do so.

The COURT: I think what you want to know really is what he refers to. I think he would have a right to state that.

Mr. WORTHINGTON: Does your Honor rule that he has a right to say what he meant to say about it?

The COURT: I think that comes within the rule I have always understood to be followed in such matters, that where there is correspondence between parties and there is an initial used, or any thing of that kind, the witness may state the fact as to whom it refers. I will permit that under exception.

Mr. WORTHINGTON: Very well.

By Mr. BEACH:

Q. Who does "P." refer to in this letter of August?

A. It means Peckham.

Q. I show you now exhibits 6 and 7 and ask you in whose hand writing they are?

A. Mr. Holmes'.
Q. Did you receive them?
A. I did.
Q. At the place to which they are addressed?
A. Yes sir.

(Exhibit No. 6 is in the words and figures following, to-wit):

"6" (An envelope) "Mr. L. C. Van Riper, 108 Fulton
47 St., New York, N. Y. Personal." (Post Mark) Washington D. C. Aug. 30, 7 P. M. Sta. M."

Mr. WORTHINGTON: There is something on that envelope you have not read.

Mr. BEACH: I would be glad to have you read anything that is there.

Mr. WORTHINGTON: I will show you something. It is right there—a memorandum in shorthand.

The COURT: Shorthand notes not being customary on an envelope perhaps you had better ask the witness about that.

By Mr. BEACH:

Q. What do you know about the hieroglyphics on the envelope, on the left hand corner.
A. I don't know anything about them.

The COURT: Then pay no attention to them.

By Mr. BEACH:

Q. Were they on it when you received it?
A. I don't remember that they were.

(Exhibit No. 7 is in the words and figures following, to wit:)

"7" "Aug. 30, '04.

"If you have bought any of that stuff sell it out at once and sell as much as you can in addition. We are going to show very slight decline, and as this is totally unexpected it will send things down like fury. Other parties will close out tomorrow and sell on Thursday.

Where is P.?

Tear this up.

H.

It may go up a little before Friday but probably not."

By Mr. BEACH:

Q. When was that written on the back of the letter?
A. That was written in June.
Q. In June of what year?
A. The 6th of June 1905.
Q. Where?
A. At Secretary Wilson's office?
Q. You said you knew Mr. Peckham. Are you familiar with his handwriting?

A. Yes sir.
Q. I will ask you in whose handwriting these two letters are?
A. F. A. Peckham's.
Q. Did you receive them from him?
A. Yes sir.

Mr. WORTHINGTON: You have not got the envelope here; have you?

Mr. BEACH: No. I now offer in evidence our exhibits No. 8 and 9.

(Exhibits No. 8 and 9 are in the words and figures following, to-wit:)

"8" "METROPOLITAN HOTEL,
WASHINGTON, D. C., *Aug.* 31, '04.

L. C. Van Riper, Esq., 108 Fulton St., N. Y. City.

DEAR VAN: About 85. It will surprise everybody and cause big drop—is opinion of best experts. There will be things doing sure. A drop of only (about) six points. This is one of the highest 48 averages for this (Sept.) month ever known. Is way above the 10 year average.

Tear this up. Do all you can.

"F."

"(9" METROPOLITAN HOTEL,
WASHINGTON, D. C., 8/31, '04.

Letter No. 2.

10:30 P. M.

Party for price here tonight to make sure of figures tomorrow (Thursday). They are going to sell all they can without breaking market if they can. It may break tomorrow Saturday, soon as report is out (perhaps before) they cut loose selling every thing in sight. Get in tomorrow early. *Be sure to close out Friday*, as soon as effect of report has been shown.

No market Saturday (Holiday) & none Monday so I understand. This is best chance ever will have.

Destroy."

By Mr. BEACH:

Q. Referring to exhibit No. 7, being the last letter from Mr. Holmes to you, dated August 30, which I read, I will ask you to explain the sentence, "if you have bought any of that stuff sell it out at once." What does that mean?

Mr. WORTHINGTON: I make the same objection, your Honor.

The COURT: I think he may state what, if any stuff he bought with the knowledge of Mr. Holmes.

Mr. WORTHINGTON: The letter says "if you have bought any stuff" which implies that he does not know.

By Mr. BEACH:

Q. May I ask, if there was any stuff that he was to buy, as understood by Mr. Holmes and Mr. Peckham?

The COURT: If he had any arrangement with Mr. Holmes as to buying any stuff, he may state what it was.

By Mr. BEACH:

Q. Did you have any arrangement with Mr. Holmes as to buying any stuff?

A. I don't know as I can answer that by yes or no.

Q. Give your own answer to it.

A. At the time we met there we thought that Price's plans were to buy, to load up with a long line of cotton during the latter part of August, in anticipation of a bullish crop report. I had not bought any at this time, because the advices had not been definite enough to suit me. Mr. Peckham was west, and between the receipt of that letter Peckham had been down here and had come to New York. He told me to go in and buy; but I was not quite satisfied and had not done anything. Then I got this letter from Mr. Holmes. Peckham was then either on his way here to Washington or was here, when I got that letter.

Q. Did you have any conversation with Peckham before this letter of August 30 was received?

A. Yes sir.

Q. What was that?

49 Mr. WORTHINGTON: Not in the presence of Mr. Holmes, I suppose?

Mr. BAKER: No; not in the presence of Mr. Holmes. We are offering in evidence his declarations of the conspiracy, and in furtherence of the conspiracy.

Mr. WORTHINGTON: I object to reasoning in a circle, by proving first a conspiracy by the declarations and then proving the declaration by the conspiracy.

The COURT: It sounds very familiar in this court room. Of course we have got to have some evidence of conspiracy outside of such declarations; but as I understand it these were directions from Peckham and advices as to buying and selling the very subject matter of the conspiracy, the very thing to be done.

Mr. WORTHINGTON: Of the alleged conspiracy your Honor.

The COURT: Yes; of course of the alleged conspiracy. I think it is admissible.

Mr. WORTHINGTON: I would like to have an exception noted to that.

The COURT: An exception may be noted.

By Mr. BEACH:

Q. What was that conversation?

A. It was to the effect that he had been down here and had a talk with Mr. Holmes.

Mr. WORTHINGTON: I object to that. The witness was not here.

Mr. BAKER: He is stating a conversation he had with Peckham.

The COURT: If he means that Peckham told him he had been here it is admissible, under the ruling.

Mr. WORTHINGTON: He was not saying that or I would not have interposed.

The COURT: Do you mean that?
The WITNESS: Yes sir.
The COURT: Go on.

A. And that Price had been selling but was buying cotton at the time Peckham came up. This was several days prior to that letter. He came up with the advice for me to begin buying cotton; but I hadn't done anything when I got this letter.

By Mr. BEACH:

Q. I will ask you whether you had bought any cotton up to the time of this talk with Peckham?
A. Not on account of Peckham.
Q. Did you have any talk with Peckham about buying any for the account of your people?
A. Yes sir.
Q. For whom?
A. Not before this letter was received though.
Q. Not before this letter was received?
A. No sir.
Q. After receiving this letter what did you do in regard to this cotton deal?
A. I sold a little cotton.
Q. You will have to explain what you mean by selling cotton and buying cotton.
A. I sold it short.
Q. You will have to explain that I expect.
A. Well it is merely selling for future delivery.
Q. What is the object of that; what do you expect to do when you sell short?
A. We expect to buy it in at a lower price.
Q. What do you expect the market to do?
A. We expect it to go down.
Q. You expect the market to go down?
A. Yes sir.
Q. Referring to the letter of August 30 again, Exhibit 7, it continues: "We are going to show a very slight decline; and as this is totally unexpected it will send things down like fury. Other parties will close out tomorrow." What do you understand to be the meaning of these words, "We are going to show a very slight decline and as it is totally unexpected it will send things down like fury?
A. It means that the government figures will.
Q. The government figures?
A. Yes sir.
Q. The government figures of what?
A. Of September 3rd.
Q. On what crop?
A. On the cotton crop.
Q. What is the meaning of this part of it: "Where is P" to what does that refer?
A. To Peckham.

Q. Did you show this letter to Peckham or communicate its substance to him?

A. I didn't see Peckham.

Q. Exhibit No. 8, the letter of August 31, 1904, from Peckham to you reads: "About 85." What does that mean?

A. That means the government figures to come.

Q. "It will surprise everybody and cause big drop—is opinion of best experts. There will be things doing sure. A drop of only about six points. This is one of the highest averages for this (Sept.) month ever known. Is way above the 10 year average. Tear this up. Do all you can. F."

Q. What is meant by "a drop of only six points?"

Mr. WORTHINGTON: I object to that——

The COURT: I hardly think that needs any interpretation, in view of the evidence introduced here. The jury will probably be able to draw an inference there, whatever it may be. If, however, he acted upon it, he can state how he treated it, what he understood it to mean, and what he did upon the strength of it.

By Mr. BEACH:

Q. What did you do if anything, after getting this letter from Peckham of Aug. 31, 1904.

A. I sold cotton on the strength of that letter and a letter from Mr. Holmes.

Q. You sold cotton?

A. Yes sir.

Q. Do you recall with whom you dealt?

A. With C. G. Gates & Company.

Q. Did you read the Government report when it came out?

A. I did.

Q. Did it have any effect on the market?

A. The market broke on it.

Q. What do you mean by the "market broke"?

A. It went down.

Q. Then what did you do?

51 A. I bought the short cotton in that I had sold before.

Q. Did that mean a loss or a gain to you.

A. It meant a profit.

Q. Of how much if you recall?

A. Of about $2100 on that operation.

Mr. BAKER: We want to offer in evidence the report of September 2, 1904, which is Exhibit 80.

Mr. ADKINS: This letter, Exhibit 8, is dated August 21, 1904 —

Mr. WORTHINGTON: If this is to be kept up I would like to have an exception. The District Attorney should not be allowed every time he goes over one of these matters, to give special emphasis to special parts of this testimony.

The COURT: A comparison may be made when a particular piece of evidence is offered with another particular piece of evidence, an exception will be noted if you desire. I do not know how the jury can understand the case in any other way. You de

not need to read the whole letter, but you can call the attention of the jury to what they are and the jury can make the comparison now.

Mr. ADKINS: The letter is marked exhibit 8, and says: "About 85. It will surprise everybody and cause big drop—is opinion of best experts."

The report is: 84.1 as compared with 91 for the month before and a 10 year average of 73.2.

This report was issued on September 2, 1904, at 1.15 o'clock P. M.

By Mr. BEACH:

Q. I do not remember whether I asked you what the profit on that speculation was.

A. About $2100.

Q. What was done with that money?

A. I deducted $105 from the August wheat deal, which was practically the loss on that trade. The actual loss was $106.25; but I did not have the exact figures with me. I paid Peckham two-thirds of the balance.

Q. I think you said you knew the handwriting of Peckham and Holmes?

A. Yes sir.

Q. I show you exhibits No. 10, 11 and 13. In whose handwriting is the face of exhibit No. 13?

A. It is in mine.

Q. Whose endorsement appears thereon?

A. F. A. Peckham's.

Q. In whose handwriting is the face of No. 10?

A. My own.

Q. Whose names appear on the back?

A. F. A. Peckham and E. S. Holmes, Junior.

Q. In whose handwriting is this paper exhibits 10 and 11?

A. F. A. Peckham's.

Q. Mr. Baker suggests that I did not ask you in whose handwriting these names on the back of the check appear.

A. F. A. Peckham's.

Q. And signed?

A. E. S. Holmes, Junior.

(Exhibits No. 10 and 11 are in the words and figures forllowing to-wit:)

52 "10" (A check)

No. XXX HOBOKEN, N. J., *Sept. 3rd*, 1904

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to F. A. Peckham or order Six hundred Seventy & no 100 Dollars $670.00 100.

LEWES C. VAN RIPER

(Stamped on face:) Second National Bank, Hoboken, Sept. 17, 1904.

(Indorsements:) "F. A. Peckham E. S. Holmes, Jr."

(Stamped on back:) "Received payment Through New York Clearing House Sept. 16, 1904. Hanover National Bank."

(Stamp:) "Pay to the order of Hanover National Bank, New York, Union National Bank, Phila. W. H. Carpenter, Cashier."

(Stamp:) "Pay any bank or banker. Endorsements guaranteed. Central National Bank of Washington City, A. B. Huff, Cashier."

"11" (A letter)

"Hotel Imperial,
Broadway, 31st and 32nd Streets, New York.

SEPT. 3, '04.

Rec'd from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, $220.00 respectively, paying all acc'ts in full to date.

F. A. PECKHAM."

(Exhibit No. 13 is in words and figures following to-wit:)

"43" (A check)

No. XXX HOBOKEN, N. J., *Sept. 3rd*, 1904

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to F. A. Peckham or order, Two Hundred Twenty and no 100 Dollars.

$220.00 100.

LEWES C. VAN RIPER."

(Stamp on face:) "Second National Bank, Hoboken, N. J., Sept. 8, 1904."

(Endorsed:) "F. A. Peckham"

(Stamp on back:) "Pay to the order of N. Y. Produce Exchange Bank. Anderson & Price Co. Bretton Hall."

(Stamp:) "Received payment through N. Y. Clearing House Sept. 7 1904, Broadway Branch, N. Y. Produce Exchange Bank."

53 Q. What does this receipt and what does this check to Mr Peckham, afterwards endorsed by Mr. Holmes, represent; what was it in payment for?

A. It was two-thirds of the profits, after deducting $105. loss.

Q. I notice that in exhibit 11 under date of September 3rd, three checks are mentioned and only two are presented here, one for $220 and one for $670.00. Where is the check for $300?

A. I don't know. I could not find that.

Q. I hand you a letter being exhibit No. 27 and 28 and ask you in whose handwriting it is?

A. It is in Mr. Peckham's.

Q. Did you receive it?

A. Yes sir.

Mr. WORTHINGTON: This is about wheat, and it comes within your Honor's ruling and *are* exception.

Mr. BEACH: We offer the wheat report in evidence in connection with this letter. Exhibit No. 27.

(Exhibits No. 27 and 28 are in the words and figures following to-wit:)

"27" "Metropolitan Hotel."

"Mr. L. C. VAN RIPER,
108 Fulton St., New York, N. Y.

(Post mark:) "Washington, D. C., Sept. 8, 1904, 5:30 P. M.
(Bears a special delivery stamp.)
(Marked "Personal" on back.)

"28" (A letter) "WASHINGTON, D. C., 9-8.
"Destroy"

"There will be a depreciation of 20 points in spring wheat on 10th—or from 87.5 (last report) to 67.5. Reduction may be more not less. Such a great reduction will no doubt raise price 5 to 10¢ inside of 2 or 3 days.

This is the best chance will have on wheat. Get in heavy.

F.

Mr. ADKINS: The wheat report of September 10th, 1904, was issued at 1 P. M. The average condition of spring wheat was 66.2. This being the first time that spring wheat has been separately reported upon in September, the only comparison that can be made is a comparison with a month ago, which is 87.5.

By Mr. BEACH:

Q. What did you do after you got this letter which has just been read in evidence, from Mr. Peckham to yourself?

A. I bought wheat.

Q. You bought wheat?

A. Yes sir.

Q. What was the result of that operation?

A. A profit.

Q. What was done with those profits?

A. I paid Peckham two-thirds of it.

Q. What were the profits?

A. Somewhere around $2500. I don't remember exactly.

54 Q. Did you, subsequent to this time, have any other further dealings in cotton?

A. I may have traded on my own account from time to time.

Q. I mean on account of the gentlemen of whom we are talking here.

A. No sir.

Mr. BEACH: Mr. Adkins will hand you certain letters.

By Mr. ADKINS:

Q. I show you exhibits 12 and 13

A. It is in the handwriting of F. A. Peckham and received by me.
Q. Exhibit 14?
A. It is a telegram received by me in New York September 28
Q. Exhibit 15?
A. That is in the handwriting — F. A. Peckham and received by me.
Q. Exhibit 16?
A. That is a telegram received by me in New York.
Mr. WORTHINGTON: What is No. 15?
Mr. ADKINS: No. 15 is a letter in the handwriting of Peckham received by the witness in New York, and No. 16 is a telegram from Peckham received in New York.

By Mr. ADKINS:

Q. No. 17?
A. It is a letter from Peckham received by me in New York
Q. Exhibit No. 20?
A. A telegram from Peckham received by me in New York.

(Exhibits Nos. 12, 13 and 15 are in the words and figures following, to-wit:)

"12" (An envelope)

"The New Willard,
Pennsylvania Avenue, 11th and F Streets,
Washington, D. C.

L. C. VAN RIPER, Esq.,
New York, N. Y.

108 Fulton St. Personal.
(Post mark:) "Washington, D. C., Sep. 26, 1904. 11.30 a. m.

"13" (A letter.)

"THE NEW WILLARD,
WASHINGTON, D. C., ——, 190 .

"Long conference Sunday between Colonel and man S. has done something P. does not like. Is going without S. knowing it, if possible, to put price up high as possible before the 1st. Then if figures show 79 say, or better, instead 81.4 as before, something will drop. Belief is here you can get it going and coming. P. going to break S. later, if he can.
Destroy sure."

"15" (A letter)

"THE RALEIGH,
WASHINGTON, D. C., *Sept* 28, 1904.

55 DEAR VAN: As stated over phone party went to R. phoned N. Y. and evidently did not say anything definite as to movements—but inference was that he was going to get in and buy. When I said over phone—party thinks—only advised who

Colonel inferred—not intended as my "thinking"—Regret cannot get at it more definitely and that program we were told about has not been so far carried out. From talks Col. has had with many—he believes they will start to buy tomorrow if they did not today. Note prices have advanced a little. Remember that Mr. P. (In N. Y.) would not say over phone to Balt. things he would if talking face to you, heard my aim on phone and in this to give you as good an idea as we have to plans.

No use phoning in a. m. so wire tonight—after talking with Col.—since talking to you on phone.

F."

Mr. ADKINS. Exhibit 10 is a telegram from F. to L. C. Van Riper, dated September 28 and received in New York at 12.25 P. M.

Mr. WORTHINGTON. I don't quite see how this telegram has been proved. It is what purports to be a telegram signed (F.), the whole telegram being in typewriting. I do not see how that telegram is proved. Nobody can prove the handwriting.

Mr. BAKER. We have proved that we could not get the originals—they were all destroyed. The witness has said that he received this telegram.

Mr. WORTHINGTON. The question I raise is as to how it is connected with Mr. Peckham.

The COURT. He said it was a telegram from Mr. Peckham. If you want to cross-examine him on that subject you may do so.

Mr. WORTHINGTON. I don't care to cross-examine him. I object to it on the ground there is nothing tending to indicate that he knows anything about where it came from.

The COURT. He says he does, and unless you care to cross-examine him on the subject I will admit it.

Mr. WORTHINGTON. I will reserve my exception on the ground that he has not showed any knowledge.

The COURT. An exception may be noted.

(Exhibit No. 14 is in the words and figures following, to-wit:)

"14" (A telegram.) "883 1235."

Received at main office, 253 Broadway, New York, Sep. 28 1904.

A 21 2 W T un 13 Wash'n D C Sep 28 12 25 P

L C Van Riper, 108 Fulton St., N Y'k

Nothing new since telephoning. Will not phone at nine morning unless something developes.

"F"

Mr. WORTHINGTON. There are two other telegrams which come within the same category, and I would like to have my exception on the same ground.

The COURT. An exception may be noted.

(Exhibit No. 16 is in the words and figures as following, to-wit:)

"16" (A telegram.) "311 148.

56

"Received at main office, 253 Broadway, New York.
A 78 W or 7 Washington D. C. Sept. 9, 1904 1.30 P. M.

L. C. Van Riper, 108 Fulton Street, New York:
Will write fully late tonight special delivery.

FRED."

(Exhibit No. 17 is in the words and figures following, to-wit:)

"THE RALEIGH,
WASHINGTON, D. C., ——, 190–.

9 P. M. Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.

At 12 tonight party goes to N. Y. Before 8 A. M. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points; that is, from 84.4. Also that Texas report from present data shows a drop from 76 to 49—something remarkable. Col. padded matters, making very strong information which P. will get tomorrow, so he will be sure to spring right in and buy. Also party will be put in for usual ten thousand. Deterioration promises to be big—very. Reports not all in but important ones rec'd. All shows above. Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early and heavy & get all back and more.

(Exhibit No. 20 is in the words and figures following, to-wit:)

"20" (Telegram.) 2132 1045.
Received at main office, 253 Broadway, New York.
A—74W. HE 6—Washington, D. C. Oct. 3, 1904.

L. C. Vanriper, 108 Fulton Street, New York:
Successful bidder best contract ever had.

FRED."

By Mr. BEACH:

Q. Mr. Van Riper, what, if any, operations did you have in September, in anticipation of the October report?

A. We bought cotton at first, and then later sold it out and went short.

Q. Tell us what you — buying and then later selling.

A. Cotton is traded in by futures, that is for delivery—say December delivery or January delivery. You buy and sell for delivery in those months.

Q. In this particular month of September, when you say "we," whom do you mean?

A. Well, I bought it.

Q. For what account?

A. In the interest of myself and Peckham.

Q. Why did you buy cotton in September?

57 A. On the strength of Peckham's advice that the report would be very bullish.

Q. What report?

A. The Government report, that was coming on the 3rd of October, and on the advices that Price was buying at that time.

Q. Tell us what you did, what deals you had, why you made them and what the result of them was.

A. I bought quite a line of cotton long, towards the latter part of September, but the market kept going down instead of going up as we expected, so Peckham wired me to come down here or telephone him—I don't remember which. I came down here just before the report was due and met him and Mr. Holmes out here in a park in Washington.

Q. You mean the report for October?

A. I mean the October report.

Q. Can you locate the park; do you know where it is?

A. I have never been there since; but it is a little park on one of these streets that the cars run on. I think it is Franklin Park; but I am not positive of it.

Q. Who were in the party at the park?

A. Mr. Holmes met us there.

Q. Who did Mr. Holmes meet there?

A. Myself and Peckham.

Q. What happened at that meeting?

A. Mr. Holmes said: "We are all wrong; Price has been selling cotton instead of buying." He says: "You had better get out and go short, the market is going to be bearish.

Q. Explain the difference between bullish and bearish.

A. Bearish means that the market will go down and bullish means that it will go up.

Q. Now continue.

A. I took the midnight train back home that night and began to sell cotton the next day, and sold some up to the time the report came out on October 3rd. Then I received a telegram from Peckham the day the report was due.

Q. Is this the telegram you refer to (exhibiting to the witness Exhibit No. 20)?

A. That is the telegram. It was arranged by Peckham that in case there was no mistake, and the report was as bearish as they expected, he would send me this telegram.

Q. This telegram reads: "Successful bidder best contract ever had."

A. Yes, sir; that was the understanding—that he was to send that message.

Q. Meaning what by it?

A. The *the* figures were more bearish than they had figured on.

Q. Was this arrangement talked about in the park—this telegram and this language?

A. No; that was arranged at my previous visit there. I was down here a day or two before this, on Sunday. I just came down for a visit, and Mr. Holmes arranged a code signal that, in case anything should go wrong in the Department, he was to pull the window shade to a certain point and Peckham then could know it and could send me word. If it went better than he expected he was to send me this message, "Best con-

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tract ever had." If it was the same as planned it was to be some other message, but I have forgotten what the other codes were, though I understood at that time.

Q. How did this window shade signal figure in it?

A. It was merely a precautionary measure, in case Mr. Hyde should overrule Mr. Holmes or there should be some mistake of some kind, or something should happen so that he could not promulgate the figures that were planned the day before.

Q. Just what use was to be made of the window shade, if you remember?

A. It was only a precautionary measure, in case of accident.

Q. Where was the window shade?

A. In the office of the statistician.

Q. What was the result of that October deal?

A. Well, the market broke on the report; but I didn't close out soon enough and I lost money on it.

Q. Did you win or lose on it?

A. No; I lost money.

The Court thereupon took a recess until 1.15 o'clock p. m.

After Recess.

L. C. VAN RIPER resumes the stand for further direct examination.

By Mr. BEACH:

Q. Mr. Van Riper, I wish to refer now to certain of the exhibits which have already been introduced in evidence and will refer first to exhibit No. 13, which begins: "The long conference Sunday "between the Colonel and man." Who was Colonel?

A. Mr. Holmes.

Q. How did he come to have that designation?

A. Mr. Peckham always called him that.

Q. Who was "man"?

A. Mr. Haas, I understood.

Q. "S." has done something P. does not like." Who is "S."?

A. It referred to Sully.

Q. Do you know who he is?

A. He was a cotton operator.

Q. Whom did you understand by P.—"S. has done something P. does not like?"

A. Price.

Q. "S. has done something P. does not like and is going without S. knowing it, if possible, to put price up high as possible."
59 You talked with Mr. Peckham about this matter *about this matter;* did you?

A. Yes, sir.

Q. What did you understand by this: "S. has done something P. does not like. Is going without S. knowing it, if possible, to put price up high as possible"?

A. Peckham had told me that Price and Sully were really working

together, although they were really opposed to each other at the time, and from this I understood that he was going to throw Sully.

Q. "Is going on without S. knowing it, if possible, to put price up as high as possible." What does that mean?

A. To advance the market as much as he could.

Q. "Then if the figures show 79 say, or better, instead 81.4, as before, something will drop." What does that mean?

A. It means that the market will drop.

Q. It says: "if the figures show 79 or better, instead of 81.4 as before." What figures does that refer to?

A. To the cotton report figures.

Q. "Belief here is you can get it going and coming. P. going to break S. later, if he can." P. and S. mean as you have already testified?

A. That is what I understood; yes, sir—Sully and Price.

Q. Coming now to exhibit No. 15, the date of which is September 28, 1904, it says:

"Dear Van—As stated over phone party went to B— phoned." What does that refer to?

A. It means that he telephoned me.

Q. Who telephoned you?

A. Peckham.

Q. Who is "party"?

A. Haas.

Q. Went to B—" what is meant by that?

A. Baltimore.

Q. "N. Y. evidently did not say anything definite as to movements, but inference was that he was going to get in and but." Whom did you understand by N. Y."?

A. Mr. Price.

Q. When I said over phone—party thinks—only advised what Colonel informed." Who is "Colonel"?

A. Mr. Holmes.

Q. "Not intended as my thinking. Regret cannot get at it more definitely—and that program we were told about has not been so far carried out." What program was referred to?

A. Price's buying program.

Q. "From talks Col. has had with man—he believes—" "Col.", I take it, is an abbreviation for Colonel?

A. Yes, sir.

Q. And by that is meant?

A. "Man" is Haas.

Q. Who is Colonel and who is Man?

A. Mr. Holmes is Colonel, and man is Haas.

Q. "He believes they will start to buy tomorrow, if they did not today. Note prices have advanced a little. Remember that P. (in N. Y.) would not say over phone to Balt. things he would
60 if talking face to face." Who is mean by that?

A. Mr. Price.

Q. "Won't say over phone to Balt. things he would if talking face to face, hence my aim on phone, and in this to give you as good idea as we have as to times. No use phoning in a. m., no wire tonight after talking with Col." What does that mean?

A. After talking with Colonel.

Q. I now call your attention to number 17, dated 9 p. m., and at the head it says: "Trying to get you on phone. This is since talking with you at seven—L. C. G. R." Those are your initials?

A. Yes sir.

Q. At 12 tonight party goes to New York." Who is party?

A. Harris.

Q. "Before 8 a. m., tomorrow, Thursday, Price will be advised that drop will be twelve to fifteen points." What does that mean?

A. A drop in conditions.

Q. "Also that Texas reports, from present data, shows the drop from 76 to 49—something remarkable. Col. passed matters, making very strong, information which P. will get tomorrow." Colonel, as you have so often said, is who?

A. Mr. Holmes.

Q. "Has passed matters." What is mean by that?

A. I don't know what he means; only what he says there.

Q. "Making very strong information which P. will get tomorrow." Who is P.?

A. Price.

Q. "So he will be sure and jump right in and buy. Also party will be put in for usual 10,000." Who is party?

A. Mr. Holmes and Mr. Harris.

Q. "Usual 10,000" is what?

A. Mr. Holmes told me that Price carried him for 10,000 bales every time these reports came out—carried him and Harris.

Q. Explain what you mean by "carrying him for 10,000 bales?

A. He *eight* bought or sold 10,000 bales, which he gave them the profit on.

Q. "Deterioration to be big—very. Reports not all in, but important ones are rec'd. All show above. Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early and heavy and get all back and more." Col. is who?

A. Colonel; that is Mr. Holmes.

Q. Mr. Adkins will show you exhibit No. 33. Do you know the handwriting?

A. It is Mr. Peckham's handwriting.

Q. From whom did you receive this?

A. From Mr. Peckham.

Mr. BEACH: I offer this letter in evidence.

Mr. WORTHINGTON: Will you prove all you can about the date of it?

Mr. BEACH: The date is not on it.

Mr. WORTHINGTON: Can you prove anything about the date? If you do not I object to it.

By Mr. BEACH:

Q. I wish you would read the letter (Exhibit 33) to yourself and state when you received the letter?

A. I received it about the 1st of October, 1904.

61 Q. Please look at Exhibit No. 17, which I read, and state whether you got exhibit No. 33 before or after you received that exhibit No. 17.

A. I think I got this after this one; either just before or just after, and I am not positive which.

Q. Give the number, if you will?

A. I received No. 33 either just after 17 or just before it.

Mr. BEACH: I offer in evidence Exhibit No. 33.

(Exhibit No. 33 is in the words and figures following, to wit:

"The New Willard, Pennsylvania Avenue, and F — Fourteenth Streets.

"F. S. Hight, Manager.

"WASHINGTON, D. C., —— —, 190-.

"L. C. V. R.:

"Just finished phoning—second time. Believe everything was intended in letter—so far as facts are concerned. Variation, showing depreciation, is estimated at 12 to 15 points. This may vary some—but point for you is—that is information to go to Price in N. Y. to-morrow. It will knock him off his pins, probably, for as far as known he has been figuring differently, as you have been advised.

"Party is expected back here to-morrow night or Friday or Saturday from N. Y. Will advise immediately upon receipt of any new facts. Looks like the one great chance we have been hoping for.

"F."

By Mr. BEACH:

Q. "Party is expected back here tomorrow night, or Friday or Saturday from N. Y." Who is party?

A. That is Mr. Haas.

Q. When did you meet Haas, or about when?

A. In October.

Q. Of what year?

A. 1904.

Q. Where?

A. At the New Willard Hotel.

Q. In this City?

A. In Washington.

Q. Who were present and under what circumstances did you meet him?

A. Mr. Holmes and Mr. Peckham brought him to my room at the Willard and introduced me.

Q. You were yourself at the Willard?

A. Yes sir.

Q. You say somebody brought him there; who was it?

A. Mr. Holmes and Mr. Peckham brought him.

Q. Now tell exactly what happened at that meeting?

A. I would have to go back a little.

Q. Tell it in your own way.

A. This October deal resulted in quite a loss, and although
62 the figures were correct, we had bought higher on advice from Peckham that Price was buying, and about the 29th of September—I would not be positive of the exact date, but around that time—they sent for me to come down here.

Q. Who sent for you?

A. Mr. Peckham, and arranged for me to meet Holmes. That was the night we met him in the park. Holmes said, the first thing: "We are dead wrong. This report is going to be bearish instead of bullish and Price has been selling cotton instead of buying. You had better get out and on the other side right away." So I went back to New York that night and started to sell out. I sold out my cotton. Then when I got this advice from Peckham I continued to sell and went short. The market did break on the Government report; but instead of closing out I held on and there was a quick rally. I closed the stuff out at a loss. Then Peckham came up and said that he had arranged with Holmes to take Haas into the deal. That was so that we could keep closer track of Price's movements. We were so far behind what he was doing was the reason we had made this mistake and got in wrong. So I came down here and met Haas at the Hotel Willard. They brought him up and introduced me.

Q. Now you may state what took place?

A. Then Haas stated that he had finally agreed to go into the deal on account of Peckham and Holmes insisting that he do it, although he opposed it and didn't want to go in at first; but he finally consented to. So he arranged then that he was to bring the information direct to me instead of to Peckham.

Q. Who was to bring it?

A. Haas; and he was to keep me posted as to Price's operations as well as to bring me information of the Government reports. I agreed to give him two thirds of the profit on any deal that we made jointly.

Q. After this meeting when did you next see Mr. Holmes and the other parties?

A. Before I answer that, I want to ask if I said two-thirds or three quarters?

Q. You said two thirds.

A. Well, it was three-quarters. I made a mistake if I said two-thirds.

Q. Was there anything further that happened at this meeting in the Willard, at the time of which you are speaking?

A. We talked for quite a while together about various matters; but I don't recall the exact conversation.

Q. Was anything said as to the division of this three-quarters of the profit?

A. No sir.

Q. When did you next see Mr. Holmes, after this meeting at the New Willard, if you can recall, and where?

A. I think I met him in Chicago.

Q. Whereabouts in Chicago?
A. I met him at the Great Northern Hotel or at the Auditorium Annex; and I think at both places.
Q. Who else was in Chicago of these parties, if you know?
A. Mr. Peckham and Mr. Haas.

Q. I believe you have stated that you are familiar with
63 Mr. Holmes' handwriting?

A. Yes, sir.

Q. Will you indicate whether you see it on that page (referring to Exhibit No. 141)?
A. Yes, sir; that is his signature there.

Mr. ATKINSON: That is under date of November 2, 1904.
Mr. BEACH: I believe this has been produced by the hotel men. We offer in evidence this register, being Exhibit No. 141, and that part of it opposite to 1832.
Mr. WORTHINGTON: What hotel is it?
Mr. BEACH: The Auditorium. The answer is: "1832—E. S. Holmes, D. C."

By Mr. BEACH:

Q. Do you see his handwriting at any other point on that page?
A. Yes, sir; the one under it.
Q. Under 1832 - L. L. Holmes, D. C.?
A. Yes.

Mr. BEACH: That is under date of November 2, 1904?

Q. Do you know the handwriting of Mr. Haas?
A. Yes, sir.
Q. Do you see it?
A. I do.

Mr. BEACH: On Exhibit No 142, under date of October 27, 1904, opposite 220 it appears—Mr. Haas—and what I take to be N. Y.
Mr. WORTHINGTON: N. Y. C.
Mr. BEACH: You evidently have seen it before.
Mr. WORTHINGTON: I saw it this morning when the hotel man produced it.

By Mr. BEACH:

Q. Do you see the handwriting of Mr. Haas on Exhibit No. 140?
A. I do. It is right here.

Mr. BEACH: Under date of Tuesday, November 1, 1904, in Exhibit No. 140, opposite 2028 appears—"M. Haas—N. Y. C." We offer that in evidence.

By Mr. BEACH:

Q. Did you meet any one else in Chicago?
A. I met Leland, Mr. Holmes' Son.
Q. Did you meet Mr. Haas and Mr. Peckham?
A. Mr. Haas and Mr. Peckham, yes, sir.

The COURT: I do not hear much that the witness says. Of course

I do not need to hear all the details of the testimony, but want to get the substance of it. We will have to have each answer read, if the witness is doing his best. You may read each answer if you will.

By Mr. BEACH:

Q. Was Mr. Peckham there?
A. Yes, sir.
Q. When did you next see Mr. Holmes after the Chicago meeting?
A. We went to St. Louis to the World's Fair.
Q. When you say "we" you mean whom?
A. Mr. Holmes, Mr. Peckham, Mr. Haas and Leland.
Q. Where did you stop in St. Louis?
A. We stopped at the Planters Hotel.
Q. Look at Exhibit 123 and state if you can identify the handwriting of Mr. Haas and Mr. Peckham?

64 Mr. WORTHINGTON: What is the date of that? I have forgotten it.

Mr. ATKINS: It is dated Friday, November 4, 1904.

A. Mr. and Mrs. Haas—But Mr. Haas' name does not look like his signature. Mr. Holmes' name is there in his handwriting.
Q. Read everything in the handwriting of Mr. Holmes.
A. E. S. Holmes, N. Y.—L. L. Holmes, ditto.
Q. Are you able to state in whose handwriting Mr. and Mrs. Peckham appears on this register?
A. I am not positive; but it looks like Peckham's.
Q. What is the next?
A. L. C. Van Riper.
Q. Whose writing is that?
A. I don't know; it is not mine.
Q. What is the next name that appears?
A. That is not Haas' handwriting.
Q. Was anything done in St. Louis or Chicago, or at both places, as to further operations in the cotton market?
A. No.
Q. Were any conversations had with regard to the speculations you were going to make together?
A. Yes; we talked over it frequently.
Q. With what result; what did you do.
A. We didn't do anything until along in November sometime.
Q. In November sometime, what did you do?
A. We began selling cotton along in November.
Q. How long did you continue to do that?
A. Up until the day of the ember report.
Q. What did you sell; you say you sold cotton up to the time of the December report. Why did you sell?
A. Because Haas brought the report that Price was selling and that the December report would be a very bearish one—the December Government report.
Q. When did you get the advices on which you operated in December?
A. We began to sell in November.

Q. Who brought you the advices?
A. Mr. Haas.
Q. How did he bring them?
A. He brought them himself.
Q. What did he say?
A. He told me to begin selling. He came right to my office. I gave him a key to my private office, so that he could get in any time he was in town.
Q. What did he say to you about Holmes, if anything?
A. He conferred with Holmes at times. He would come down to Washington and then he would come back to New York.
Q. That was during how long a period?
A. That was in the latter part of November,—from about the middle of November to December 3rd.
Q. Do you recall when the crop report came out in that year and month?
A. It came out on December 3rd.
Q. What deals did you have in cotton during the periods you have detailed, and with whom did you deal?
A. With Hubbard Brothers in New York.
65 Q. Who are they?
A. Members of the New York Cotton Exchange and brokers.
Q. With whom else, if any one else, did you deal?
A. We dealt with L. H. Mercer.
Q. Who is he?
A. He is a member of the New York Cotton Exchange.
Q. Where?
A. He was a broker on the first floor at that time.
Q. Did you deal with any others?
A. C. G. Gates & Company.
Q. With any others?
A. We dealt with Nicholas Waterhouse & Sons, of Liverpool, England.
Q. What was the result of these operations with the brokers you have mentioned?
A. About $167,000 profit.
Q. What was done with that profit of $167,000?

Mr. WORTHINGTON: If the answer to that calls for information about the contents of checks and other writings, I object to it on the ground that the checks are the best evidence.

Mr. BAKER: I presume if he drew a check he has a right to testify that he did.

The COURT: There is no question pending, I think.

Mr. WORTHINGTON: Yes; the question was how he disposed of this $167,000. I object to it if it calls for statements of what was done in writing by checks or otherwise, on the ground that the documents should be produced or their absence accounted for.

The COURT: I think he can state how it was divided, and what was done with it. The other is only the method. I think he may state the ultimate facts.

Mr. WORTHINGTON: I would like to have an exception to that.
The COURT: An exception may be noted if you want it.

By Mr. BEACH:

Q. What was done with that profit?
A. Eventually I paid Haas one-half of it and Peckham one-quarter of it.
Q. I want to know exactly how it was divided. Tell it in your own way.
A. About $57,000 was drawn and divided on the 11th or 12th of December. $10,000 was used to buy a membership on the Cotton Exchange for Peckham, and $25,000 was put in for capital of the firm of Peckham, Mercer & Company, and $75,000 was held to operate with.
Q. What did a seat on the Cotton Exchange cost?
A. It cost $10,000.
Q. What was the capital of that firm?
A. $25,000.
Q. What was the amount with which you were to operate?
A. $75,000.

Mr. LESTER: I want to object to you gentlemen talking so loud. I can hear you very much better than I can the witness.
Mr. BEACH: Then it is a good thing to have you in between us.
Mr. LESTER: Yes; but I don't want him to hear what you say between yourselves.
Mr. BEACH: Of course we had no idea of that.

66 By Mr. BEACH:

Q. You said there was a division of a certain sum about December 11th or 12th. I hand you two papers, and ask you if you can identify them, being Exhibits No. 53*b* and 53*c*?
A. Yes sir.
Q. I also hand you exhibit No. 21, and ask you if you can identify it?
A. Yes sir.
Q. When were these memoranda made, or about when?
A. These were made around the 11th of December, 1901.
Q. Where were they made, and tell us all about the meeting of December 11th or 12th?
A. These were made in my office by myself at 108 Fulton Street.
Q. Who was present and what happened?

Mr. WORTHINGTON: He said he made them in the office by himself.
The WITNESS: I said I made the memorandum myself in the presence of Mr. Holmes, Mr. Haas and Mr. Peckham.

By Mr. BEACH:

Q. Taking this memorandum, made at that time, tell us what was done there, with those three parties present?
A. Exhibit No. 53*c* is the account of Hubbard Brothers and

showed a profit of $31,160. Exhibit No. 53*b* is a general summary of all the different accounts, and showed a profit of $166,986.62.

Q. Go on and explain what the other figures are on both papers?

A. After deducting the $110,100 which was set aside for these other purposes, left a balance of $56,886.62.

Q. Give me that again?

A. $56,886.62. In order to make it even I added $113.38 to that, which made $57,000.

Q. What did you do with that $57,000?

A. I divided it into four parts.

Q. What did you do with the parts?

A. I paid Peckham one-quarter of it, and I paid Haas one-half of it.

Q. How did you make the payment to Haas?

A. I gave him $14,250 in cash, and I gave him a check for $21,250, which included $10,000 that he had advanced in November.

Q. Which included what?

A. $10,000 that Haas had advanced to me.

Q. When and why did he make that advance?

A. To give me confidence in the deal and to help out.

Q. When was that? Can you tell us the time when he gave you this $10,000?

A. About November 10th.

Q. Where?

A. At my office, 108 Fulton Street.

Q. How did he give it to you? In what form?

A. He gave me a check.

Q. On what bank?

A. On the 28th Street branch of the Corn Exchange Bank.

Q. Look at Exhibit 21. Whose handwriting appears on the face of that?

A. It is mine.

Q. And on the back?

A. Mr. Haas.

Mr. WORTHINGTON: Is that the check for $21,250?

67 Mr. BEACH: Yes; we offer this in evidence.

Mr. WORTHINGTON: I do not care to see it.

Mr. BEACH: This check is as follows:

"No. XXX. HOBOKEN, N. J., *Dec. 12th*, 1904.

"The Second National Bank of Hoboken, Through the New York Clearing House Association.

"Pay to M. Haas or order Twenty-four thousand two hundred fifty "dollars $24250.00.

LEWIS C. VAN RIPER."

(Stamped as follows:)

"Certified, payable at Dec. 13 (2) 1904. The National Park Bank of New York ——————, Teller."

"The Second National Bank, Dec. 16, 1904, Hoboken, N. J."

"The Nat'l Park Bank, New York, Dec. 13, 1904. Certified."

Endorsed as follows:

"M. Haas"

"Received payment, Through the New York Clearing House, December 13, 1904, endorsements guaranteed, The Corn Exchange Bank of New York, Frederick T. Martin, Cashier."

By Mr. BEACH:

Q. Why did you give Haas a check for part and cash for another part?

A. He asked to have a quarter of it in cash.

Q. What did he do with the cash, if you know?

Mr. WORTHINGTON: Find out first if he knows.

By Mr. BEACH:

Q. I say, if you know. Do you know?

A. He paid it to Mr. Holmes.

Q. When and where?

A. Right in the office at that time.

Mr. BEACH: I offer in evidence these memoranda, Exhibit 53*b* and 53*c*.

Mr. BAKER: We will have them copied in the record, and we would like to show them to the jury instead of reading them. They are almost unintelligible if they are read.

(The papers referred to are as follows:)

EXHIBIT 53*b*.

"Liverpool
486.90

1714.12	8348.62
486.65	19466.00
4000.00	54342.00
H. B.	31160.00
N.	53670.
	166986.62
	110100.
	856886.62
	113.38
	57000.00

68 100000
10100
110100.

57000
56886.62
113.38
Cables due Van B. 100.
213.38"

EXHIBIT 53*c*.

Nov. 22–	Cash	2,000
	25	1,400
	28	1,510
	29	8,000
		22,910

	Rec'd	
Nov. 30–		15,000
Dec.	7	25,000
	9	14,070
		54,070
		22,910
Profit		31,160

H. BROS."

By Mr. BEACH:

Q. I think you said Mr. L. H. Mercer was a broker in New York?
A. Yes sir.
Q. What kind of a broker?
A. He was a member of the New York Cotton Exchange.
Q. And you referred to the firm of Peckham, Mercer & Company. I wish in your own way you would tell how that firm was formed, when, what its history was, and when it was dissolved, if ever.
A. Mr. Peckham entered into an agreement with Mr. Mercer, I think, on December 13.
Mr. WORTHINGTON: Were you present?

By Mr. BEACH:

Q. Mr. Worthington wants to know if you were present.
A. Yes.
Q. Go on and tell it in your own way.

69 Mr. WORTHINGTON: What date did he say?
Mr. BEACH: December 13.

By Mr. BEACH:

Q. What year, Mr. Van Riper?
A. 1904. Mr. Peckham agreed to furnish $25,000 capital, and was to receive four-fifths of the profits, and to get his capital paid back out of the first profits.

By Mr. WORTHINGTON:

Q. Was that agreement in writing?
A. Yes sir.

Mr. BEACH. I have here the articles of copartnership, if your Honor please.

Mr. WORTHINGTON: We do not care to make any point about the subscribing witnesses not being called.

By Mr. BEACH:

Q. Do you know the handwriting of Mr. Mercer and Mr. Peckham?

A. Yes sir.

Mr. BEACH: We offer this in evidence.

Mr. WORTHINGTON: I suppose it will be connected with us in some way?

Mr. BEACH: I think so. I will read it.

(The agreement referred to was read in evidence by Mr. Beach as follows:)

This agreement, made this thirteenth day of December, in the year one thousand nine hundred and four, between Frederick A. Peckham and Lewis H. Mercer.

1. Witnesseth, that the said parties above named have agreed to be and become partners in business under the firm name of Mercer & Company, in the commission and brokerage business, for the buying and selling of stocks, bonds, cotton, grain and other commodities dealt in on the various exchanges in the City of New York, and for the transaction of all business in connection therewith, their co-partnership to commence on the day of the date hereof and to continue for five years thereafter, and to that end and purpose the said Frederick A. Peckham has contributed to the said co-partnership for working capital, the sum of twenty-five thousand dollars in cash, to be used and employed in common between the said co-partners for the support and management of the said business to their mutual benefit and advantage.

2. And it is agreed by and between the parties to these presents that at all times during the continuance of the co-partnership hereby formed the said Frederick A. Peckham and the said Lewis H. Mercer shall devote their whole time and attention to the business of said co-partnership, and do their and each of their best endeavors and to the utmost of their skill and power exert themselves for the joint interest, profit, benefit and advantage of said co-partnership.

3. And it is agreed by and between said parties that there shall be had and kept at all times during the continuance of their co-partnership perfect, just and true books of account wherein there shall appear as well all moneys received, paid, laid out and expended in and about the said business as also all transactions by way of pur-
70 chase or sale had by reason or on account of their said business, and all matters and things whatsoever to the said business and the management thereof in anywise belonging, which said books shall be used in common between the said co-partners so that neither of them may have access thereto without any interruption or hinderance of the others.

4. And it is agreed that the said co-partners shall and will at all times during the said co-partner-ship bear, pay and discharge equally between them in proportion to their respective interests, all rents

and other expenses that may be required for the support and management of the said business, and that all gains, profit and increase that shall come, grow or arise from or by means of their said business, shall be divided as follows: Frederick A. Peckham to receive four-fifths, and Lewis H. Mercer one-fifth, and that all loss that shall happen to their said joint business shall be borne and paid by them in the same proportions. It is, however, understood that the amount of money put in for working capital shall be first paid back to the said Frederick A. Peckham out of all net profits accruing, before there shall be any division, and the said Frederick A. Peckham agreed to make further advances if needed, to keep the working capital of the firm not less than twenty-five thousand dollars and to hold said Lewis H. Mercer harmless from any personal loss in connection with said business.

5. It is further agreed that said Frederick A. Peckham, and said Lewis H. Mercer shall each receive a salary of one hundred dollars per week during pendency of this agreement, said salary to be charged to expense account, and neither partner hereto shall take any further sum for his own support and use without the consent of the other, and the said partners shall not at any time withdraw from the said co-partnership more than their respective share of the profits of the business then earned, and no profits shall be divided until the amount advanced by said Frederick A. Peckham shall have been repaid and a sufficient amount remaining to make the working capital not less than twenty-five thousand dollars.

6. And it is agreed that an account of the standing of the business shall be taken, and an account between the partners shall be settled as often as once a year, and as much oftener as either of the parties may desire, and in writing request.

7. None of the parties hereto shall subscribe any bond, sign or endorse any note of bond, accept, sign or endorse any draft or bill of exchange, or assume any other liability, verbal or written, either in his own name or in name of the firm, for the accommodation of any other person or persons whatsoever, or on his own account have any dealings in the various exchanges without the consent in writing of the other party hereto, nor shall either party lend any of the funds of the co-partnership without such consent of the other party hereto.

8. And it is agreed that at the end of the term or sooner determination of their co-partnership, the said co-partners each of the
71 parties to the other, shall and will make a just true and final account of all things relating to their said business, and in all things truly adjust the same, and all property, goods, chattels and assets of the co-partnership shall after the moneys advanced by Peckham are repaid be divided equally between said partners, in proportion to their respective interests.

9. And it is agreed that at any time during the continuance of said co-partnership, or at the end of the term or other sooner determination of their co-partnership, either of said co-partners may take in writing, an offer to the other party of the price at which such party will buy the interests of the other co-partner, or sell

to the other co-partner his interest said offer to be made in proportion to the interest of each; that is to say, in case said Frederick A. Peckham offers to buy the interest of Lewis H. Mercer, the offer made to said Lewis H. Mercer to be in proportion to his interest, with the understanding that said Peckham will accept from said Mercer an amount equivalent to four times the amount offered by him; and such other co-partner shall thereupon within five days signify his election whether he or they will buy or sell at that price, and if he fails to do so by notice in writing within that time, the party making such offer, may within five days buy or sell at his election according to his own offer, and the parties hereto agree on tender of the price stated in such offer to forthwith do and perform all things and execute all bills of sale or other papers necessary to carry out the terms hereof, and to secure to the other the rights accruing under such offer.

10. Upon and after the expiration of the said term, or other sooner determination of the said partnership, except it be terminated by reason of violation or default of either of the said co-partners, the partner returning shall not within one year thereafter, either alone or jointly with, or as agent for any person, either directly or indirectly set up, exercise or carry on the said business of buying and selling of stocks, bonds, cotton, grain and other commodities within the limits of the City of New York aforesaid; and shall not set up, make or encourage any opposition to the said business thereafter to be carried on by the party continuing said business or his representatives or assigns, nor to do anything to the prejudice thereof; and shall not divulge to any person any of the secrets, accounts or transactions of, or relating to the said co-partnership.

11. It is further agreed that in case of the death of either partner said deceased partner's heirs or assigns may have the right to buy the interest of said living partner or sell the interest of said deceased partner, in accordance with the terms contained in paragraph 9, providing for either partner to purchase the interest of the other.

12. And the said parties hereto agree that the partner continuing the said business shall have the right during the one year above limited to continue to use the firm name of Mercer & Company, if so desired by him, or them, and that said name shall not be used either directly or indirectly in such business or any business akin thereto, nor the sole and exclusive use of all such name be
72 interfered with by such retiring partner.

13. It is further agreed that all checks, drafts and moneys belonging to or in the hands of said firm, shall, be deposited in some bank or banks to be mutually agreed upon by said partners, and that all checks drawn against said bank accounts shall be signed Mercer & Company by said Lewis H. Mercer and countersigned by F. A. Peckham, and that no money shall be drawn from any bank without the signature of both parties as above.

14. And it is further agreed that said Frederick A. Peckham may, at his option, have the privilege to change the firm name from Mercer & Company to that of Peckham, Mercer & Company, and

that said Lewis H. Mercer give his consent to such change at any time desired.

In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

FREDERICK A. PECKHAM. [L. S.]
LEWIS H. MERCER. [L. S.]

Witness:
L. E. GOODBERLET.

By Mr. BEACH:

Q. I hand you three exhibits, numbered respectively, 48, 51, and 52. You have testified, as I understand it, that you know the handwriting of Mr. Peckham, Mr. Haas and Mr. Holmes. I hand you these three exhibits and ask you to say whether the names of the parties are signed thereto. Exhibit 48 is what?

A. 48 is signed by Frederick A. Peckham and myself, and witnessed by Mr. Haas.

Q. Now, 51 and 52.

Mr. WORTHINGTON: What about 51.

Mr. BEACH: We have not come to that yet. He says 48 was signed by Peckham and himself and Haas.

Mr. ADKINS: In the presence of Mr. Haas.

By Mr. BEACH:

Q. What about 52?

A. 52 is signed by Peckham and Haas and witnessed by Haas and myself. Haas signed it twice.

Mr. BAKER: I did not understand you.

A. Haas signed this one twice.

By Mr. BEACH:

Q. That is 52?

A. And I signed as a witness. Haas signed again here (indicating).

Q. Haas signed again on the foot of 52?

A. Yes sir.

Mr. BEACH: We offer these two exhibits in evidence.

Mr. WORTHINGTON: What about 51?

Mr. BEACH: We have not got to 51.

73 Mr. WORTHINGTON: I understand these are to be connected with Mr. Holmes in some way?

Mr. BEACH: Yes sir.

Mr. WORTHINGTON: Upon that statement they are competent under your Honor's ruling.

Mr. BEACH: Mr. Baker, very properly, if your Honor pleases, says to me that we do not know that we can say these two papers are connected with Mr. Holmes. I would like to state to the Court, in your hearing, what the connection is.

Mr. WORTHINGTON: Go ahead. I do not care to hear it.

By Mr. BEACH:

Q. Will you look at the exhibit before you, 51, and say whose handwriting appears on that and where the handwriting occurs?

A. Edwin S. Holmes, Jr.'s handwriting in the body of it, and M. Haas' signature, witnessed by myself.

Mr. WORTHINGTON: Whose signature?

A. M. Haas.

Mr. WORTHINGTON: And is not signed by Mr. Holmes, I understand?

Mr. ADKINS: No; it is not signed by Moses Haas.

Mr. BEACH: We offer those three exhibits in connection with the articles of copartnership of Peckham, Mercer & Co.

Mr. WORTHINGTON: Are you going to account for the mutilation of this paper, Mr. Beach?

Mr. BEACH: Yes.

(The three exhibits referred to were thereupon read in evidence by Mr. Adkins, as follows:)

EXHIBIT 52.

"Whereas, Frederick A. Peckham and Lewis H. Mercer, have entered into a certain copartnership agreement, bearing date of December 13, 1904; and

"Whereas, M. Haas has contributed Twelve Thousand Five Hundred Dollars ($12,500) in cash towards the Twenty-five Thousand Dollars furnished by Frederick A. Peckham as capital for the firm of Mercer & Company.

"It is hereby agreed between Frederick A. Peckham and M. Haas that said M. Haas is entitled to receive one-half of all profits divided until the sum of Twelve Thousand Five Hundred Dollars ($12,500) shall have been received, after which said M. Haas shall be entitled to receive two-fifths of all future net profits or divisions that may be made from either of the profits or the assets of said firm or Mercer & Company, or any continuation of said firm or business.

FREDERICK A. PECKHAM.
M. HAAS.

In the presence of

M. HAAS.
LEWIS C. VAN RIPER.

Dec. 31, 1904.

For value received I hereby transfer my interest as above
74 stated to L. C. Van Riper.

M. HAAS."

Exhibit 51.

"Trust Agreement.

"I hereby certify that I have this day entered into an agreement with one Frederick A. Peckham, wherein I have contributed to said Peckham the sum of Twelve Thousand Five Hundred Dollars ($12,500) towards the capital to be furnished by him for certain co-partnership agreement which he has entered into under date of December 13, 1904, and that I hold from said Peckham certain agreement entitling me to the return of said twelve thousand five hundred dollars ($12,500) from the first profits accruing, and to further interest in the profits of said business as equivalent to two-fifths of the total net profits.

"Now therefore this agreement witnesseth:

"That Edwin S. Holmes, Jr., has contributed one-half of said Twelve Thousand Five Hundred Dollars ($12,500) and is to receive one-half of all profits which I myself may receive from time to time on account of said agreement with Peckham.

"H. HAAS.

"In presence of
"LEWIS C. VAN RIPER.

Exhibit 48.

"Whereas, Frederick A. Peckham and Lewis H. Mercer have entered into a certain co-partnership agreement, bearing date of December 13, 1904, and

"Whereas, L. C. Van Riper has contributed Six Thousand Two Hundred Fifty Dollars ($6,250) in cash towards the Twenty-five Thousand Dollars furnished by Frederick A. Peckham as capital for the firm of Mercer & Company.

"It is hereby agreed between Frederick A. Peckham and L. C. Van Riper that said L. C. Van Riper is entitled to receive
75 one-fourth of all profits divided until the sum of Six Thousand Two Hundred Fifty Dollars ($6,250) shall have been received, after which said L. C. Van Riper shall be entitled to receive one-fifth of all future net profits or divisions that may be made from either the profits or the assets of said firm of Mercer & Company, or any continuation of said firm or business.

"FREDERICK A. PECKHAM.
"LEWIS C. VAN RIPER.

"In the presence of
"M. HAAS."

By Mr. BEACH:

Q. Mr. Van Riper, what was the object of this firm being organized?

Mr. WORTHINGTON: I object to that your Honor. The firm paper states what it was organized for.

Mr. BEACH: I think we may say that we offer to prove in that connection, arrangements———

Mr. WORTHINGTON: Mr. Beach, do you wish to prove that that was merely pretense, and there was some other real motive?

Mr. BEACH: Yes.

Mr. WORTHINGTON: Then it is competent, of course. I would rather you would let the witness state what it was.

Mr. BEACH: I will do whatever you want me to do.

By Mr. BEACH:

Q. How did this firm come to be organized?

Mr. WORTHINGTON: I suppose Mr. Holmes is to be connected with this?

Mr. BEACH: Certainly; he is connected with it by this declaration of trust.

Mr. WORTHINGTON: I say he is to be connected with this pretense. I understand you to say that the paper does not really show what the object was, but that there was some other object, and that you will show that Mr. Holmes was cognizant of some other object.

Mr. BEACH: No. Perhaps if you will let me state what I want to do we will not have so much difficulty about it. I offered the articles of copartnership between Mercer and Peckham. Now I want to show that while that apparently was the arrangement between Peckham and Mercer, there was another arrangement between Holmes, Haas, Peckham and Van Riper, which does not appear on the fact of the copartnership articles, and the connection of Mr. Holmes with it, I think, will appear as we progress.

The COURT: That is all that Mr. Worthington wanted to be assured of.

Mr. WORTHINGTON: I only wanted to be assured that you
76 were going to show that Mr. Holmes had something to do with it.

The COURT: On that statement you may go on.

By Mr. BEACH:

Q. For what purpose was this copartnership formed, Mr. Van Riper?

A. Merely for convenience, to enable us to operate to better advantage.

Q. Whom do you mean by "us"?

A. Myself and Haas.

Q. And who else, if any one?

A. Haas was the only one I was supposed to know in the deal.

Q. Who else did you know?

A. Mr. Holmes had an interest, and Mr. Peckham.

Q. Did you have any conversation with Mr. Holmes about this matter?

A. Yes; we all talked it over.

Q. Whom do you mean by "we"?

A. The four of us, Mr. Holmes, Mr. Haas, and Mr. Peckham.

Mr. BAKER: I cannot hear what you say.

A. Mr. Holmes, Mr. Haas, Mr. Peckham and myself.

By Mr. BEACH:

Q. Where did you discuss it?

A. We talked it over on our trip to the World's Fair, and we met at Mr. Peckham's apartment at the Imperial Hotel, where these papers were signed.

Q. From what source did the money for Mr. Peckham's seat come?

A. It came from this profit in cotton.

Q. And the $25,000 capital for the firm?

A. From the profits on this cotton deal.

Q. And you spoke of some $75,000 on which it was intended to operate. Where did that come from?

A. Part of the profits.

Q. Was this money actually put up?

A. Yes sir.

Mr. WORTHINGTON: You say "this money". Do you mean——

Mr. BEACH: I think it was the $10,100 from this profit.

Q. Who handled the $75,000? How was it put up?

A. I retained that $75,000 until later in the month?

Q. What became of it later in the month?

A. It was paid over to Haas and to Peckham.

Q. Paid over to Haas and Peckham?

A. Yes sir.

Q. Was any operation conducted on that $75,000.

A. Yes sir.

Q. In what?

A. We sold cotton later in the month, in December, and made a profit of some $13,000.

Q. In what?

A. Cotton.

Q. Was that on any report?

A. It was on Mr. Haas' information, that——

Q. What information did he have or purport to have.

A. He claimed to have some source to know what the ginners' report was to be.

Q. What is the ginners' report?

A. It is a report which is issued by the census bureau from time to time.

77 Q. What was the profit on that deal, did you say, roughly?

A. About $13,000.

Q. When were these profits divided on this ginners' deal?

A. The latter part of December.

Q. Of what year?

A. 1904.

Q. Where?

A. At the Breslin Hotel, and at my office.

Q. Who was there at the Breslin Hotel?

A. Mr. Holmes, Mr. Haas and Mr. Peckham.

Q. Who were at your office? You say something was done at your office?

A. One-quarter of the profits from the ginners' deal was taken

up at the Breslin Hotel and given to Mr. Haas, and by Mr. Haas given to Mr. Holmes who was sick in bed there.

Q. Who was sick?

A. Mr. Holmes.

Q. What took place there?

Mr. WORTHINGTON: Were you there, Mr. Van Riper?

A. Yes sir; I was there. Well, after Mr. Haas gave Mr. Holmes the money, he put it under his pillow, and he turned around to Mr. Peckham and said: "Freddie, we have made up our minds we want to draw that other money down, too."

Mr. BEACH: We what?

A. Want to draw the rest of this money down too.

By Mr. BEACH:

Q. "We want to draw the rest of the money down?"

A. Yes sir; and Mr. Peckham said, "Well, if you do you will practically put me out of business."

Mr. WORTHINGTON: Who said that?

A. Mr. Peckham. There was some little argument there between all of us, and I told them if they wanted to, they could take it down; it was their money, but I didn't think it was fair to expect me to furnish all of the money and for them to draw down all of the profits every time. So the next day—Mr. Holmes was able to get out the next day and they all came down to the office, and I drew a quarter of the money in cash, gave that to Mr. Haas in the office, and gave him a check for $2500, which was one-quarter of the cost of membership.

By Mr. BEACH:

Q. What membership do you mean, Mr. Van Riper.

A. That had been bought by Peckham on the Cotton Exchange.

Q. Go on, Mr. Van Riper, and tell anything else that happened on this occasion.

A. Mr. Haas then gave Mr. Holmes the cash that I paid him and said that he would get the check cashed and give him the currency on that.

Q. Go on.

A. Then the following day or the day after I gave Mr. Haas a check for the other quarter, for his share of the profits on the ginners' report, and for a quarter of the membership, which amounted to about $38,000. I took an assignment of half his interest in the firm of Peckham & Mercer.

78 Q. I now hand you exhibits numbered 53A, 53B, 22 and 23. I will take them in that order. What is the first exhibit? In whose handwriting is it?

A. Exhibit 22 is a check to Haas, signed by me for $2525.

Q. What is the next?

A. Which was given him on December 30th?

Q. For what?

A. For one-quarter of the cost of the membership.

Q. What is the other check?

A. The other is a check for $38,292.90.

Q. That is for what?

A. Which represents a quarter of the hundred thousand dollars, the quarter of the profits on the ginners' report, and a quarter of the membership. When I gave him that check, he assigned his interest in the firm to me, and turned over this trust agreement, which was torn up and thrown in the waste basket.

Mr. WORTHINGTON: What check do you refer to; the $38,000 check? Do you mean when you gave him that?

A. Yes sir.

Mr. BEACH: We offer in evidence this check, exhibit 23. It is as follows:

"23" (A check).

"No. A 1791. HOBOKEN, N. J., *Dec.* 31*st*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to the order of H. Haas Thirty-eight Thousand Two hundred ninety-two & 90/100 Dollars.

$38,292.90 (Red ink $38292.90)

LEWIS C. VAN RIPER."

(Endorsed:) "M. Haas."

(Perforated:) "Paid."

(Stamped:) "Received payment through the New York Clearing House Dec. 31 1904 Endorsements Guaranteed The Corn Exchange Bank of N. Y. Frederick T. Martin, Cashier, 28th St."

79 By Mr. BEACH:

Q. This is your check (referring to Exhibit 23). Is that Mr. Haas' endorsement?

A. Yes, sir.

Mr. BEACH: The second check is as follows:

"22"

"No. A 1788. HOBOKEN, N. J., *Dec.* 30*th*, 1904.

The Second National Bank, Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas Twenty-five Hundred twenty-five & 00/100 Dollars $2525.00.

LEWIS C. VAN RIPER.

(Stamped:) "Not over Three Thousand $3000.

(Stamped:) "The Second National Bank Hoboken Dec. 31, 1904.

(Endorsed:) "M. Haas."

(Perforated:) "Paid."

(Stamped:) "Received payment through New York Clearing House Dec. 30 1904 Endorsements Guaranteed The Corn Exchange Bank of N. Y., Frederick T. Martin, Cashier."

By Mr. BEACH:

Q. That is your signature (referring to Exhibit 22) Is that his endorsement?

A. Yes sir.

Q. Now, Exhibits 53 A and 53 B. What is Exhibit No. 53 A?

A. That is a memorandum I made of the trades on the ginners' report. It shows a profit of $43,285 from which I deducted the $113 that I had added to the figures prior on the December 11th settlement, also $100 for cables. After deducting $213.38, it left $43,071.62, which was divided in four parts and $10,767.90 was paid to Mr. Holmes in the Breslin Hotel, and that amount was paid to Haas in this thirty-eight thousand dollar check.

Q. How was it paid to Mr. Holmes?

A. In currency, by Mr. Haas.

Q. I wish you would take that check of December 30, No. 23, and from your memoranda tell us just what that check was given for, because I haven't it very clear in my own mind.

A. That represents one-half of the $75,000 which I held to operate with, one-half of the $25,000 capital that was put in Peckham, Mercer & Company, one quarter of the membership, which was $2525, and one-quarter of the profits on the Ginners' report, which was $10,767.90.

By Mr. WORTHINGTON:

Q. You said half of the $75,000. Did you say it represented one-half of the $75,000?

80 A. One-quarter of the $75,000.

Q. Did you mean one-half of the $25,000?

A. One-quarter of the $25,000.

Q. You said one-half.

A. One quarter was paid the day before. I got mixed on that One-quarter of the $25,000, one-quarter of the $75,000, and one-quarter of the membership and one-quarter of the profits on the ginners' report.

By Mr. BEACH:

Q. Just how was Mr. Holmes paid? In what form was he paid?

A. He was paid $10,767.90 at the Breslin Hotel, the night on the 29th. On the 30th he was paid $25,000 in currency; that is, it was turned over to Haas, two $10,000 bills and a $5,000 bill, and Mr. Haas paid that to Mr. Holmes.

Q. I did not hear you.

A. Mr. Haas turned that over to Mr. Holmes. Then that $2525 check, which was made payable to Haas, and he said he would get it cashed.

Q. What check have you there?

A. That is exhibit 22.

Q. Is that the check you referred to?

A. Yes sir.

Mr. BEACH: If your Honor please, I would like to suspend at this point.

The COURT: I am willing to sit a little later if you want to. I kept you waiting a while this morning unnecessarily.

Mr. BEACH: I shall have to ask your Honor to indulge me a little, as I am somewhat under the weather myself. We might sit longer a little later in the week, if that will be agreeable to the jury.

The Court thereupon adjourned until Tuesday, June 18, 1907, at 10 o'clock A. M.

(The foregoing is copied from Book 8 of the stenographer's minutes, pages 839 to 946.)

81 THE UNITED STATES
vs.
EDWIN S. HOLMES, JR.

Stenographer's Minutes, Book 9, Pages 947 to 1083.

82 *Testimony of L. C. Van Riper.*

(Book 9, Pages 947-993, Direct.)

L. C. VAN RIPER resumes the stand for further direct examination.

By Mr. BEACH:

Q. Mr. Van Riper, I want to address your attention this morning to the profits on the December 3rd Cotton Crop Report. I hand you exhibits 53 B and 53 C, already in evidence. I understood you to say yesterday that the amount of those profits, in round numbers, was $167,000. Through what houses or cotton brokers——

A. Before I answer that question I would like permission to make a slight modification in an answer I made yesterday. I said in my testimony that the money paid Haas on December 30th was in two $10,000 and one $5,000 bill; but after thinking it over I am not positive about the dimensions of that money at that time. I had that confused with another $25,000 item that took place early in the month.

Q. What was the other $25,000 item that took place early in the month?

A. It was $25,000 that was drawn around the 11th of December; but this money that was drawn on the 30th was drawn by Peckham from the firm of Peckham, Mercer & Company, and charged to my account. It did not pass through my hands at all; but it was paid to Haas, in my office.

Q. Going back to the earlier transaction, and the payment of this $25,000, I wish you would state how that was paid?

A. That was paid to Peckham in $25,000 items. It was given to Peckham early in the month, one was, and placed to the credit of the firm, and the other was to place to his own personal credit.

Q. Going back to the question I was starting out with this morning, I would like to know the houses through which you dealt, in

making this profit of, in round numbers, $167,000 on the Cotton Crop Report of December 3rd.

Mr. WORTHINGTON: I object to that question on the ground that the witness has not stated that he made the profit on the Cotton Report of December 3rd.

Mr. BEACH: I so understood the testimony.

Mr. BAKER: He testified to that yesterday.

The COURT: You can ask him, if there is any doubt about it.

By Mr. BEACH:

Q. What profit did you make on the Cotton Crop Report of December 3rd, 1904, on the operations up to the Ginners'
83 Report?

A. The amount settled for was $165,986.62.

Q. Through what house or through what cotton brokers was that operation conducted, and give their names?

A. Hubbard Brothers, of New York.

Q. How much from Hubbard Brothers?

A. $31,160.

Mr. WORTHINGTON: What are you reading from, may I ask?

A. From Exhibit 53 B.

By Mr. BEACH:

Q. What other house or what other broker?

A. L. H. Mercer—$53,670.

Mr. WORTHINGTON: Are you reading from the same exhibit.

A. Yes, sir.

By Mr. BEACH:

Q. Where did you make the rest?

A. Nicholas Waterhouse & Sons, of Liverpool.

Q. How much?

A. It is agured out in three items here.

Q. Give us the aggregate.

A. I will have *the* figure the aggregate. The first was $8,348.62.

Q. What is the next item?

A. $19,466; and $54,342.

Q. Mr. Van Riper, are you able to say how the three items of the Waterhouse accounts were paid to you?

A. It was cabled over at separate times—three different times.

Q. Were the cables directed to you?

A. It was cabled through the banks.

Q. Are you able to state through what banks this money came?

A. The $19,466 item came to the Park National Bank in New York. The $54,342 item came to the New York National Exchange Bank.

Q. And the others?

A. The $8,348 item, I think, came through the Park National Bank or the Second National Bank of Hoboken. I am not positive; but I know it was deposited to my credit.

Q. Coming now to the payment from Hubbard Brothers, how were those payments, if you can recall?

A. By check or checks.

Q. I hand you some papers which are marked Exhibit No. 213.

Mr. WORTHINGTON: May I interrupt you to ask if you are through with the exhibits the witness has been read-
84 ing?

Mr. BEACH: Yes; do you want to look at them?

Mr. WORTHINGTON: When you are through with them I would like to look at them.

By Mr. BEACH:

Q. I hand you papers which are marked Exhibit 213. Please state what they are?

A. Statements from Hubbard Brothers.

Q. I have you Exhibits Nos. 236 and 237, and 238, and ask you to state what they are?

A. They are checks from Hubbard Brothers to myself.

Q. With those exhibits before you, will you tell us, if you can, how Hubbard paid you?

A. He paid me in checks.

Q. In what amounts and at what time?

A. November 30th—$15,000.

Q. What number exhibits are you reading from now?

A. Exhibit No. 237—236—December 7th, $25,000—238—December 9th, $14,070.

Q. How much of those three checks was profit?

A. $31,160.

Q. What was the other?

A. I had paid Hubbard Brothers, on account of margin, $22,910.

Q. When did you pay that $22,910, if you know?

A. I cannot tell from memory. It was at different times.

Mr. WORTHINGTON: You have the books of Hubbard Brothers here to show these operations, have you now?

Mr. ADKINS: Do not these statements show it.

Mr. BEACH: I offer these exhibits in evidence.

Mr. WORTHINGTON: I object to them unless the books from which they are taken are to be produced. These are statements of accounts from the books of Hubbard Brothers which the witness says purport to show his dealings with the firm of Hubbard Brothers. I do not suppose they would be admissible in evidence, unless the books are produced.

The COURT: Do I understand that you want to treat them like the books?

Mr. WORTHINGTON: No; I am informed that the books are here and we can see whether the memorandum is correct.
85 Mr. BEACH: If your Honor please, I understand that these are the statements furnished to the witness by Hubbard Brothers, and the checks in settlement. I asked the witness how

much he got from Hubbard Brothers, and in what form. I am offering these statements and checks, which he identifies.

Mr. WORTHINGTON: I have no objection to their going in as accounts that were rendered to him; but it does not necessarily prove that the transactions were what they represent them to be.

The COURT: The books do not prove that either, as far as that is concerned. The jury will understand that they are mere statements from the books.

Exhibits Nos. 236, 237, and 238 are in the words and figures following, to-wit:

Account Current. (213)

NEW YORK, *Nov.* 26, 1904.

Mr. L. C. Van Riper, 108 Fulton Street, New York, in account with Hubbard Brothers & Co., Coffee Exchange Building.

		Dr.	Cr.
Nov. 22.	Cash		2000 cash
			1400 cash
	Ac/s 7399		1090
			4490

(Admitted.)

"Account current.

NEW YORK, 30, 11, 1904.

Mr. L. C. Van Riper, in Account with Hubbard Bros. & Co., Coffee Exchange Building.

		Dr.	Cr.
Nov. 26.	Balance		4490 Cash
28.	Cash		1510 Cash
29.			800
30.	Ac/s 75381/39		8860
30.	Cash	15000	
	Balance	7260	
		22260	22260
	Balance		7260

86 Account Current.

NEW YORK, 9, 12, 1904.

Mr. L. C. Van Riper, in Account with Hubbard Bros. & Co., Coffee Exchange Building.

		Dr.	Cr.
Dec. 1.	Balance		7260
1.	Ac/s 7588		5785
7.	7844		4100
	7853		11925
8.	Cash		10000
Dec. 7.	Cash	25000	
9.		14070	
		39070	39070

Cash paid in,		22910
Cash Rec'd Nov.	30.	15000
Dec.	7.	25000
	9.	14070
		54070
		22910
		31160.00

87 No. 7399. 179.

Account Sales of 1900 *Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account L. C. Van Riper, for delivery in March.*

Subject to the Rules of the N. Y. Cotton Exchange.

Bought.				Sold.			
	Bales.				Bales.		
11 26.	300	947	2841	11 22.	500	974	4870
	600	948	5688		500	973	4865
	1000	947	9470	23.	100		952
			17999		100		951
				25.	700	948	6636
							18274
			275			Gain	1375
			Charges.				
Brokerage		15					285
Telegrams							
							1090

Credited.

E. E.
New York 26. 11. 1904.

HUBBARD BROS. & CO.,
Per O.

88 No. 7539. 179.

Account Sales of 2000 Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account Van Riper, for Delivery in May.

Subject to the Rules of the N. Y. Cotton Exchange.

	Bought.			Sold.			
	Bales.				Bales.		
11/30	926	18520		11/28	10	974	9740
					5	964	4820
					5	963	4815
							19375
		855			Profit		4275
			Charges.				
Brokerage,							300
Telegrams							
							3975
			Credited.				

E. E.
New York 11/30, 1904.

HUBBARD BROS. & CO.,
Per G.

89 No. 7538. 179.

Account Sales of 5000 Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account of L. C. Van Riper, for Delivery in Mch.

Subject to the Rules of the N. Y. Cotton Exchange.

	Bought.				Sold.		
11/30	20 Bales	913	18260	11 28	10 Bales	964	9640
	20	912	18240	29	7	931	6517
	10	908	9080		3	930	2790
			45580		10	928	9280
					10	919	9190
					10	917	9170
							46587
		1007			Profit		5035
			Charges.				
Brokerage							750
Telegrams,							
							4285
			Credited.				

E. E.
New York 11/30, 1904.

HUBBARD BROS. & CO.,
Per G.

90 No. 7588. 179.

Account Sales of 3000 Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account of L. C. Van Riper, for Delivery in Mch.

Subject to the Rules of the N. Y. Cotton Exchange.

Bought.					Sold.		
12/1	3 Bales	879	2637	11 30	5 Bales	922	4610
	27	878	23706		10	920	9200
					5	920	4600
			26343				
					10	918	9180
							27590
			1247		Profit		6235

Charges.

Brokerage,	450
Telegrams,	
	5785

Credited.

E. E.
New York 12/1, 1904.

HUBBARD BROS. & CO.,
Per G.

91 No. 7844. 179.

Account Sales of 1000 Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account of L. C. Van Riper, for Delivery in Mch.

Subject to the Rules of the N. Y. Cotton Exchange.

Bought.				Sold.		
	Bales.				Bales.	
12/7	783	7830	12/1 10	868	8680	
		850	Profit			4250

Charges.

Brokerage,	150
Telegrams,	
	4100

Credited.

E. E.
New York 12/7, 1904.

HUBBARD BROS. & CO.,
Per G.

92 No. 7853. 179.

Account Sales of 3000 Bales of Cotton, Bought and Sold by Hubbard Bros. & Co. for Account of L. C. Van Riper, for Delivery in March.

Subject to the Rules of the N. Y. Cotton Exchange.

	Bought.				Sold.			
	Bales.						Bales.	
12/7	15	785	11775	12/1	30	868	26040	
	15	786	11790					
			23565					
			2475	Profit				12375
			Charges.					
Brokerage,	3000	15	450					450
Telegrams,								
								11925

Credited.

E. E.
New York 12 7, 1904.

HUBBARD BROS. & CO.,
Per G.

93 (Admitted.) (237)

No. 20707. NEW YORK, *Nov.* 30, 1904.

The Bank of New York, National Banking Association.

Pay to the order of L. C. Van Riper Fifteen thousand Dollars.
$15000.00.

HUBBARD BROS. AND CO.

(Hubbard Bros. & Co.)

(Endorsed on back:)

Pay to 3nd National Bank of Hoboken,
Lewis C. Van Riper.

Endorsement Guaranteed
The Second National Bank
of Hoboken.

Received Payment,
Through New York Clearing House,
Dec. 1, 1904.
Second Nat. Bank,
Hoboken, N. J

94 (Admitted.) (236)

No. 9152. NEW YORK, *Dec.* 7, 1904.

The Corn Exchange Bank.

Pay to the order of L. C. Van Riper Twenty-five thousand Dollars.
$25000.00.

HUBBARD BROS. AND CO.

(Hubbard Bros. & Co.)

(Endorsed on back:)

Pay to order of
Second National Bank,
Hoboken, N. J.
Lewis C. Van Riper.

Received Payment,
Through New York Clearing House,
Dec. 9, 1904,
Second Nat. Bank,
Hoboken, N. J.

95 (Admitted.) (238)

No. 9168. NEW YORK, *Dec.* 9, 1904.

The Corn Exchange Bank.

Pay to the order of L. C. Van Riper Fourteen thousand seventy Dollars.
$14070.00.

HUBBARD BROS. AND CO.

(Hubbard Bros. & Co.)

(Endorsed on back:)

Pay to order of
Second National Bank,
Hoboken, N. J.
Lewis C. Van Riper.

Received Payment,
Through New York Clearing House,
Dec. 10, 1904,
Second Nat. Bank,
Hoboken, N. J.

96 By Mr. BEACH:

Q. You said the payments from Mercer were how much?
A. About $51,000. I think that exhibit is not here. I don't remember the exact amount. (Examining the exhibit) It was $53,670.

Mr. WORTHINGTON: I want to have this record clearly show what my understanding about this matter is. I understood the Hubbard books were here, and took it for granted the Government was not trying to introduce evidence of their contents by something which purported to come from them, when the books themselves were not to be offered in evidence. I want therefore, if I may be permitted, to withdraw what I said a month ago, that I had no objection to these going in for that purpose, provided the Government will produce the books themselves. I understand there may be some question as to whether the Government will produce the books, and therefore I move to strike out these memoranda, on the ground that the books are the best evidence.

Mr. BEACH: I do not quite like to be put in the position of withholding anything from my learned friend. I understand that he himself has subpœnaed the Hubbard books. Is that so?

Mr. WORTHINGTON: I do not know whether we have or not.

Mr. BEACH: You don't know much more about the Hubbard books than I do?

Mr. WORTHINGTON: I don't know anything about the Hubbard books, but I am exceedingly anxious to know about them.

Mr. BEACH: I have not seen them.

The COURT: That is not the question here.

Mr. WORTHINGTON: The question here is whether the Government can put in these memorandums purporting to be made by somebody and sent to somebody, and then keep back the books themselves.

The COURT: It does not make any difference whether anything is kept back or not. Here is an offer of certain papers, and the objection withdrawn to them, under a misapprehension. The objection will be treated now as having been made seasonably, and if there is anything to say why these are admissible or not admissible I will hear it.

Mr. WORTHINGTON: I would like to ask the witness a question or two before I argue that objection.

By Mr. WORTHINGTON:

Q. Have you any independent recollection as to the amounts and dates of your different transactions with Hubbard Brothers in connection with cotton, in the latter part of November and the first part of December, 1904, so that you can state them without any memoranda?
A. Not in detail.

97 Mr. WORTHINGTON: Then I object to these papers on the ground that they are mere memoranda made by somebody else, and there is nothing to show where they came from or that

they are genuine, or that they correctly represent any transactions between the witness and Hubbard Brothers.

The COURT: Do you wish to ask him anything further bearing on this point? What are these; are they statements you have prepared recently, or the same you had when you were settled with?

The WITNESS: These are the original statements I had at the time the settlement was made with Haas and Peckham.

The COURT: They represent the settlement you made with them?

The WITNESS: Yes sir, my figures are on one of them and they were made at that time.

The COURT: That would seem to make them admissible.

Mr. LESTER: These Hubbard books are here now ——

The COURT: I do not know anything about whether they are here or not, and I cannot consider that question. Here are certain papers sent to him by the parties with whom he dealt, and showing his transactions, and he says he got them.

Mr. LESTER: Our position is that if they are not here they ought to be here, and as a matter of fact they are here. We can readily see how these papers could be some advantage, in that they would collect the data in a form which is easy to read, and we would have no objection to the admission of these papers provided the Government put in these books so that it could be seen from the record itself that these papers were true and correct.

The COURT: It does not make any difference to my mind whether they are true or not. They are what he settled on, and they represent the transaction that was actually consummated.

Mr. WORTHINGTON: Your Honor rules that the papers are competent.

The COURT: They may be treated as in, in connection with the testimony of the witness, and an exception may be noted.

Mr. BEACH: And the checks accompanying them?

The COURT: Certainly; they were a part of the transaction, I understand.

By Mr. BEACH:

Q. Now I next come to the next profit in December, on the ginner's report. I hand you exhibit No. 53-A and ask you what that is?

A. That is a memorandum made by myself on November 29th, 1904.

Q. Of what?

A. Of the profits made on what you term the ginner's report.

Q. Do you mean November?

A. I mean December.

98 Q. What was the profit on what I term the ginner's report?

A. The net profit was $13,285.

Q. Can you tell us in what amounts and through whom the various items were made and paid, to result in that profit?

A. L. H. Mercer.

Q. Is that the same Mr. Mercer we were talking about yesterday?

A. Yes, sir.

Q. What was done with that net profit?

A. From the settlement made on December 13th there was due me $213.38, which I had added to the figures to make them even, and that was deducted, which left $43,071.62.

Q. What became of that?

A. That was divided into four parts.

Q. Who got them?

A. On the night of December 29th, 1904 Peckham and I went up to the Breslin Hotel, and met Mr. Holmes and Mr. Haas in their room there, and paid Mr. Haas $10,767.90. In fact we paid them, as I recall it, $10,800, because we didn't have the exact change. Peckham charged this difference to himself, which appears on the other memorandum, in his own handwriting. It was $32.10.

Q. What was the difference?

A. $32.10.

Q. I hand you a paper marked exhibit No. 53-D, and ask you what it is?

A. It is a memorandum made by myself on December 3rd, 1904.

Q. About what?

A. About this particular payment.

Q. In whose handwriting are the figures $32.16 and F. A. P.?

A. Mr. Peckham's.

Q. In whose handwriting is the footing—37,000?

A. Mr. Peckham's.

Mr. BEACH: We offer in evidence these exhibits 53-A and 53-D.

Said exhibits Nos. 53-A and 53-D are in the words and figures following, to wit.

(53-A)

99

2nd deal.

12/12	42500
12/19	53500
12/19	35000
12/19	75000
	2055.00
8000	41230.00
	43285.00
Van	213.38
4)	43071.62
Peck. & Van each.	10767.90

(Admitted.)

(53-D)

Dec. 30.

25	
2525	
27525	Col.
10767.90	
38292.90	Haas

100 Cash 1200.00 V.

¼

10767.90 } Dec. 29
25000.00 } 30

36967.90

32.10 F. A. P.

37,000.00

(Admitted.)

101 Q. I call your attention to two entries in ink of December 31st and "Col." when were they made?

A. They were made later on.

Q. The others were made when?

A. On December 30th.

Q. Did Mr. Holmes see those figures on Exhibit 53-D?

A. Yes, sir.

Q. Did Mr. Peckham?

A. Yes, sir and Mr. Haas.

Q. I will ask you the same question about Exhibit 53-A; and whether those figures were seen by the parties?

A. Yes sir; these were shown to them at the Breslin Hotel on the 29th.

Q. Mr. Van Riper, did Mr. Holmes ever talk to you about a gold mine which he had?

A. Yes, sir.

Q. When, where, and what did he say about it?

A. It was mentioned first on the trip from St. Louis coming home.

Q. What was said on that occasion?

A. There was not very much said about it. He merely said he had an interest in some claims out in Idaho.

Q. When did he next say anything about it and where?

A. About the last of December, 1904.

Q. Tell us about the place and what he said, and under what circumstances?

A. He and Mr. Haas came into my office and said they had a little contract they wanted me to sign so that Mr. Holmes could show his friends and explain how he got hold of so much money.

Q. When was this, relative to the division you have just been talking about?

A. I think it was on December 30th, or around that time.

Q. What sort of a contract was that?

A. I don't remember.

Q. Have you got it?

A. No, sir.

Q. What became of it?

A. They took it with them.

Q. Have you paid any money to Mr. Holmes for a mine?

A. No, sir.

Q. Have you acquired any mine for Holmes?

A. No, sir, not that I know of.

Q. Do you recall whether Mr. Holmes fixed on any price for this mine or mentioned any figures?

A. I think they mentioned $40,000; but I am not really positive.

Q. Have you see- that paper since this occasion you speak of?

A. I have not.

Q. Do not answer this question until Mr. Worthington has an opportunity to object. Have the letters of August 18th 1904, and August 21st, 1904, being respectively exhibits 2-3 and exhibit- 4-5 any reference to this gold mine transaction?

102 A. No, sir.

Q. Do you recall the letters?

A. I had not heard of the gold mine at that time.

Q. Did Mr. Holmes ever talk to you as to what would happen to him if it were known that he was giving out this information?

A. Yes, sir.

Q. Will you state what he said, when and where?

A. He said that nothing could happen to him; that he would merely resign, and they could not prosecute him, as there was no law covering it.

Q. When was this?

A. I think it was in December.

Q. Of what year?

A. Along the 1st part of December.

Q. Did he tell you how he knew there was no law to cover his case?

A. Yes sir. He said he had had legal advice.

Q. Did he give the source of that legal information?

A. No, I don't think he did.

Q. Did Mr. Holmes ever talk to you about any earlier rumors of leaks in his department?

A. Yes, sir.

Q. What did he say?

A. On one occasion he told me that he had made a demonstration to President Roosevelt and had shown him his system, and that President Roosevelt had given him a hearing. He said he had gone up to the White House and demonstrated how impossible it was for any advance information to get out before it was officially given out, and that the President congratulated him on the system being perfect.

Q. Did he indicate about when this visit to the White House was?

A. I think it was the time that it was rumored that Sully had the figures in December, 1903. It was just after that.

Q. Did Mr. Holmes indicate whether there was any truth in this assertion of leakage?

A. Yes, sir.

Q. What?

A. He told me that they had furnished the figures to Mr. Price.

Q. Who had?

A. He and Haas; and further that Mr. Haas had come down here at Mr. Price's solicitation to see if the figures could not be made

higher than was ordinarily expected at that time and that he went back and reported that the highest they could get it would be 10,250,000 bales.

Q. Do you recall on what report that was?

A. December, 1903. Mr. Price was then short of the market and said that would not do him any good, and he wanted Haas to come back here again and get the yield higher, so that he could get under 10,000,000, so that Price could turn and take the long side instead of the short side. Mr. Haas then came back and Mr. Holmes figured that the best he could do was 10,020,000
103 bales. Haas reported this to Price, and then Price told him to come back and get it under 10 million, if it was only one bale, because of the effect it would have on the market, and agreed to give him a certain fixed price if he would do that. Haas then came back and arranged and so reported to Price.

By Mr. WORTHINGTON:

Q. Arranged what?

A. Arranged to get the figures under ten million.

By Mr. BEACH:

Q. Do not answer this question until Mr. Worthington has had an opportunity to object if he desires. At the Hotel Breslin interview, which you described yesterday, and referred to again to-day, was anything said about Mr. Price?

A. Yes, sir. After Haas had paid Holmes the money Mr. Holmes *Mr. Holmes* turned to Mr. Peckham and said: "Freddy, we want to draw our money down; that is our share of the $75,000." He said "We don't want to take any risk in these operations." He said: We don't have to take any risk, because Price carries us without any risk to ourselves, and we don't want to leave our money up." I said that I didn't think that was fair; that I didn't want to take all the risk and only get 25 per cent of the profits, and that as long as this money was all velvet I thought it was only fair to leave the fund to operate with. They argued the matter and the argument got quite heated and Haas got a little excited and said that, as a matter of fact, he didn't suppose they were to put any money in the firm; that they thought we were going to put them in for nothing and give them an interest in the firm of Peckham & Mercer. I said there was never anything of that kind talked about at all, and if they insisted on pulling this operating fund down, I would take over their interest in the firm and give them their money in the firm, and that I would withdraw from the operations, because I didn't want to take that kind of a risk. Then Mr. Haas says: "Well, we don't want you to feel that way, Commodore. We want to treat you right; but as long as the Colonel wants to settle this up, let's settle this up and after this we will put up our share of the money. We will form a pool by June, when the next report comes out and we will put up our share. And I said: "Well I have got nothing to say. If you want to pull this money down it's yours. You've got nothing to show for it, but at the same time it is our understanding and you can have it." They said: "Well, that is all right. We will form a

pool and we'll put up—how would $20,000 do? Suppose we put up $20,000?" I said whatever you think is right and fair is all I want."

So it was then arranged to come down to the office on the next day and complete the adjustment of this firm matter and the speculative fund. The next day we met at my office.

104 Q. You have already detailed that.

A. Yes sir.

Q. What if anything was done towards the formation of a pool for operating on the report of June, 1905; when did you next see Holmes after that, as well as you can recollect?

A. I saw him about the last of January or the first of February, somewhere around there. He and Mrs. Holmes were in New York on a visit.

Q. Whom were they visiting there?

A. Visiting Mr. and Mrs. Peckham. Mr. Haas was there and I saw them quite a good deal for a day or two, while they were in New York.

Q. Was anything done there towards this June pool of 1905?

A. It was merely talked about. We were forming plans then, at the solicitation of Mr. Price, to try to get Mr. Hyde a better position, so that he would resign from the Department. Mr. Holmes figured that he was sure to be promoted to Mr. Hyde's place. Mr. Haas said that Price would furnish the money to pay Hyde a big salary if we could satisfy Hyde that he was not being gotten out of the way for a purpose; but they were afraid that Hyde might suspect that they wanted him out of the way unless they had him engaged to take charge of some business where he thought they wanted him for his ability. After that I saw Haas quite frequently.

Q. Did you see Holmes after that?

A. I saw Holmes once or twice after that. Early in March Holmes came to my office and said that he had been down and had an interview with Price that day and that he had arranged with Price to meet Mr. Hyde.

Q. Go on and tell all that happened.

A. After that Mr. Haas told me that Hyde had come to New York and had met Mr. Price, and that they had had a talk.

Mr. WORTHINGTON: Was this conversation with Mr. Haas?

A. Yes sir.

Q. Mr. Holmes was not present?

A. Not at this time.

Mr. WORTHINGTON: I submit that we have not got anything to do with that.

Mr. BEACH: I think that is right.

(After conference.)

My associates say I ought not to take the position I do.

Mr. BAKER: It was in furtherance of a conspiracy. There was a movement to get Hyde out of the way. But he is relating that led up to the June matter, that is to say they were going to operate on the next cotton report.

105 The COURT: That did not result in anything, did it?

Mr. BAKER: They attempted to do it, but it did not result in anything.

The COURT: I would not put in what attempts were made, that did not result in anything.

By Mr. BEACH:

Q. I do not see what Mr. Haas said to you about what Mr. Hyde did or did not do. Anything that Mr. Haas or Mr. Holmes may have said as to this deal would be proper.

Mr. WORTHINGTON: I do not object to his stating anything that he said Mr. Holmes said, or that took place when Mr. Holmes was present. I suppose that is competent under your Honor's rulings, in a case of this kind.

The COURT: Let him confine himself to that for the present.

By Mr. BEACH:

Q. Go on with reference to this June 1905 deal. You may continue and tell us what either Mr. Haas or Mr. Holmes told you about that, and their plans.

Mr. WORTHINGTON: I object to anything Mr. Haas said unless Mr. Holmes was present.

The COURT: That should be confined to what was said when Mr. Holmes was present.

Mr. BEACH: What did Mr. Haas and Mr. Holmes do?

Mr. WORTHINGTON: To his personal knowledge; not from what Mr. Haas said.

By Mr. BEACH:

Q. Not what he said, but what he did.

Mr. BAKER: May I suggest that if Mr. Haas came to see him about a deal that was to be made in June, and Mr. Holmes, according to the testimony was a co-conspirator with Mr. Haas, certainly what Mr. Haas said and what he did in regard to that deal is admissible in evidence against the defendant Holmes.

The COURT: The trouble is that he is liable to put in a great many things by way of narration that would be inadmissible. You all know pretty well what the witness is going to say. I don't know.

By Mr. BEACH:

Q. You may proceed, Mr. Van Riper, and tell us what either Mr. Haas or Mr. Holmes did, to your knowledge, about this proposed June deal.

A. On this last visit of Holmes to my office he said that he was then going out to visit some of the State agents or Special agents, and that Price was planning that if this report would appear bearish to accumulate a big line of cotton in June; and that as he expected then to be the head of the Department of the Bureau of Statistics

they would be able to give any kind of figures they wanted, for the next two months.

106 Q. Did he state why he expected to be the head of the Bureau of Statistics?

A. They were just then trying to get Mr. Hyde out of the way in some manner.

Q. Go ahead.

A. Then later Haas told me that Price had met Hyde and did not like him, and was afraid to do business with him direct; and that they were then planning to get Hyde sent to Europe to report on foreign crops or foreign cotton or something—to have him sent in the interest of the Government, and that he would be gone four months. Later they told me it was four months. At a later interview Haas told me——

Mr. WORTHINGTON: One moment. You cannot state what Haas told you.

The COURT: If it is mere narration, I think not. He was not going to do anything on the statement that Hyde was going to Europe?

Mr. BEACH: They wanted him to do something.

The COURT: They were not asking him to do anything, I understand. They were keeping him posted as to what was happening somewhere else. If that is it, I do not think it is admissible.

Mr. BEACH: I may misunderstand your Honor; but my idea was that these parties in the final December division taking down the money that was in this man's hands——

Mr. WORTHINGTON: I have concluded to withdraw this objection and go into all of this business as to what Haas said whether Holmes was there or not.

By Mr. BEACH:

Q. Go ahead.

A. Later Haas told me that they had got Hyde appointed to go to Europe and he would be gone four months. During that time Mr. Holmes would be the head of the Department and they would have everything their own way.

Q. This was about when, as near as you can fix the time?

A. This was about the middle of March or the first of June.

Q. What year?

A. 1905.

Q. Continue as to anything that either of these parties did and reported to you, in this general line?

A. I don't remember anything that happened then until towards the June report. Mr. Haas used to drop in there now and then. Along about the middle of May, somewhere around that time, he said that he would soon be ready to begin operations. I told him I was ready to put my money up and he said he was ready to put his up.

Q. Did he do it?

A. I didn't hear from him again until the 31st of May. He

outlined, at the last visit, that the plan was for a bear market,
107 and that the indications then were that the June report would be very bearish; that he would let me know when anything developed. On the 31st of May he called me up on the long distance telephone and said he was in Baltimore. He said: "Get in and buy all you can." I said: "Why, the market has been going up for a week or ten days, and it looks dangerous now to buy." He said: "It's all right; go in and buy." I said "Have you got the figures?" He said: "Yes; the acreage will show a reduction of about thirteen per cent and condition will be around seventy-five."

Q. Did he say where he got that information?

A. He said he had seen the Colonel. Then I bought some cotton on the market, and the market began to break right away. Before he cut off he said: "I will meet you at the Waldorf at eight o'clock or somewhere around that time." I think he stated the hour. It was that night some time. So I went to the Waldorf and met him in the corridor of the Waldorf. He said: "I just met Price and Price is very much excited. I think he has gone to work and got short of the market, and I have got to go up to his room. He said it was room 951 or 961. I am not sure of the number of the room that he gave me. He says: "You had better go to your room and I will call you up within an hour." So I went to my room and waited there for a half or three quarters of an hour. He called me up and told me to meet him at the Thirty-third Street down town L, and said: "I have got to go down South." So I got a cab and went over there and met him. He says: "Price wants me to go down and see the Colonel and see if this report can't be figured so that it will be more bearish. He has gone to work and got short of the market." He says: "I don't know what to tell you to do." I said: "How about this $20,000 you were to contribute?" "Well," he says, "I will be here and fix that up with you tomorrow." He says: "Don't do anything until you hear from me." So I got on the Elevated and rode down with him to the Baltimore & Ohio Depot. I coaxed him not to come down here. I said: "Don't do that." I fairly pleaded with him not to come down here and try to do anything like that. He said: "I don't think I will go near the Colonel; but I promised Price I will go down, and I will go down. I have got to keep my word with him; but don't you do anything until you hear from me." So the next day he called me up on the phone and said he was in Baltimore. He says: "I have seen the Colonel and there will be no change." I said "All right." He says: "I will be up to close that other matter with you tonight." He says: "You had better stand pat," and I said: "All right."

Q. What other matter . . . he refer to?

A. The $20,000 item.

Q. Go ahead.

A. So I didn't see him any more that day, but the next morning
108 on the morning of the report he called me up about 8:30 or 9 o'clock, and says: "I have just gotten a code message from the Colonel," and he says: "It's 77, about." I says: "That

is not what you told me yesterday." He says: "Well, that's what it will be." "Now," he says, "I think you had better get out." In the meantime cotton had been breaking and had gone down, and I had a beautiful loss in my account of about twenty or thirty thousand dollars.

Q. What do you mean by "11½" and "77"? You will have to explain that.

A. 11½ was the percentage of reduction in acreage, and 77 was the condition. So I said to him: "Well, I am not going to get out." I said: "How about that money?" He says: "Oh, I will come in and fix that all right."

Q. Did he come in?

A. No, sir; he never came near me.

Q. The crop report came out on that day, did it?

A. Yes sir.

Q. How did the figures on the report compare with the figures 11½ and 77; if you remember?

A. The acreage reduction was 11.4 and the condition was 77.2.

Q. Do not answer this unless there be no objection. Did Mr. Holmes ever tell you how he got this advance information?

A. Yes sir.

Q. What did he say about it?

A. He said that he was able to get hold of the State agents' and general agents' reports the day before, and those were about all they paid much attention to; and that he was a very rapid mathematician and could figure very rapidly, and about all he had to do was to look at a page of figures and he could tell what the footing was. He said that Mr. Hyde always took his recommendations, anyway.

Q. I now hand you Exhibits 18 and 19, and I will ask you in whose handwriting the face of them is?

A. They are signed by myself, but the handwriting is that of a clerk.

Q. The endorsement is in the handwriting of whom?

A. Of F. A. Peckham and E. S. Holmes, Jr.

Q. In each case?

A. Yes sir.

Mr. BEACH: We offer these exhibits in evidence.

Exhibits Nos. 18 and 19 are in the words and figures following, to wit:

109 (18)

No. A1625 M. H. S. 25 HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken. Through New York Clearing House Association.

Pay to the order of F. A. Peckham One hundred & 00/00 Dollars. $100.00.

LEWIS C. VAN RIPER.

(Endorsed on back.)

"F. A. Peckham.
Signature of check O. K.,
E. S. Holmes, Jr.

Pay Chemical Nat'l Bank,
New York
or order
Union Nat'l Bank,
Philadelphia.
W. M. Carpenter, Cashier.

Pay
And bank or banker
Endorsements guaranteed
Chemical National Bank
Washington, City.
A. P. Huff, Cashier.

110

Received payment,
Through New York Clearing House,
Note Teller
Oct. 3 1904
The Chemical National Bank
of New York.
No. 12.

(19)

No. A1626 HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association,

Pay to the order of F. A. Peckham one hundred and 00 100 Dollars. $100.00.

LEWIS C. VAN RIPER.

The Second National Bank
Sep. 30 1904
Hoboken, N. J.
P. T.

(Stamp)

(Stamp)

(Endorsed on back.)

Pay Chemical Nat'l Bank
New York
or order
Union Nat'l Bank.
111 Philadelphia.
W. H. Carpenter, Cashier.

F. A. Peckham.
E. S. Holmes, Jr.

Pay
Any Bank or Banker,
Endorsements guaranteed
Central National Bank
of Washington City
A. B. Ruff, Cashier.

Received payment.
Through New York Clearing House,
Note Teller
Sep. 30 1904
The Chemical National Bank
of New York
No. 12.

112 By Mr. BEACH:

Q. For what were those two checks given, if you know, Mr. Van Riper?

A. They were loans to Peckham.

Q. Referring to the December report of 1904—the cotton crop report of December 3rd. I think it was—how did the figures you received in advance of the report agree with the actual figures of the report when published?

Mr. WORTHINGTON: I think the form of that question is objectionable your Honor. He may ask him what figures he got.

Mr. BEACH: I am advised that he told those figures.

Mr. BAKER: He has testified to the receipt of the figures.

Mr. BEACH: I thought he had; I am sorry.

By Mr. BEACH:

Q. How did the figures you received compare with the figures of the crop report as issued?

Mr. WORTHINGTON: I object to that form of question as calling for a conclusion, your Honor. He can state what figures he received.

Mr. BEACH: Has he not told that, Mr. Worthington? I thought he had.

By Mr. BEACH:

Q. Can you say what figures you got on the December, 1904, report, in advance of the report itself?

A. Yes, sir.

Q. What were they?

A. Haas called me up on the phone and said: "I just got a message from the Colonel; he says it will be a little under 12,200,000; and he says further the report will say that this does not include linters."

Q. I do not know what "linters" may be. What is meant by that?

A. It is a product made from seed cotton.

Q. Yes.

A. An inferior grade of cotton.

Q. Did you see the crop report as issued?

A. Yes, sir.

Q. How did the information thus given you compare with that?

A. My recollection is that the figures issued were 12,162,000, and that the statement regarding linters was also made.

Q. Did you communicate the information which Haas thus telephoned you to anyone before the crop report was issued?

A. I think I told Mr. Mercer what the figures would be; but I did not tell him any source of information.

Q. My question was, did you tell him before the crop report was actually issued, yourself?

A. Yes, sir.

113 Mr. BAKER: Now we want to offer in evidence, if the Court please, the report of December 3rd, 1904, 11:15 a. m.

"Preliminary returns to the chief of the Bureau of Statistics of the Department of Agriculture indicate a total production of cotton in the United States in the year 1904-05 amounting to 12,162,000 bales. Round bales have been included in this estimate and reduced to their equivalent in square bales. The estimate does not include linters.

"The estimated production by States will be made public on December 5, at 11 a. m.

JOHN HYDE,
Chief of Bureau.

Approved:
JAMES WILSON,
Secretary."

Cross-examination.

By Mr. WORTHINGTON:

Q. Mr. Van Riper, your largest profits on this business seem to have been in that operation of December, 1904. Was that made in buying cotton or selling?

A. Selling.

Q. You sold understanding that the crop report would be such that the price would go down?

A. Yes, sir.

Q. And it did go down?

A. Yes, sir.

Q. When did you begin selling that cotton by which you made that money?

A. Around the middle of November.

Q. About the middle of November?

A. Around the middle.

Q. Have you anything here which will show when you made your different purchases?

A. I have not anything myself; I think we have some——

Q. I mean, is there anything here which will enable us to find out?

A. I think so.

Mr. WORTHINGTON: I would like to know what it is, and get at it.

(Certain exhibits which had been introduced in evidence *are* taken by the stenographer were sent for.)

By Mr. WORTHINGTON:

Q. When you gave directions to the brokers to sell this cotton, of course you gave them the ordinary formal order slip? Somebody made the order?

114 A. No; it was done either by phone or verbally, or by cable.

Q. What do you say?

A. It was done either by telephone, verbal order, or by cable.

Q. Well, somebody reduced the thing to writing before the order was executed?

A. I do not know about that.

Q. You say not?

A. I did not say.

Q. Did you yourself, when you directed the brokers to sell cotton for you in November, 1904, give the orders to them in writing, any of them?

A. I do not think so.

Q. You gave the order if it was in New York by telephone, and if it was a Liverpool firm by cable?

A. By cable; yes, sir.

Q. But I suppose you would write the cablegram?

A. Yes, sir.

Q. Have you any means of letting us know just how much cotton you bought on the different days in the latter part of November, and how much you sold, and when it was sold?

A. I think so.

Q. And at what figure?

A. I think so.

Q. How can you do that?

A. By reference to the various accounts.

(Certain papers and books were produced and handed to Mr. Worthington.)

Mr. ADKINS: Those are the Waterhouse statements.

By Mr. WORTHINGTON:

Q. Here are what purport to be statements of Waterhouse & Sons

of Liverpool. Will they help you in that respect so far as they are concerned?

A. Yes sir; they will.

Q. I wish you would tell us, and have it put down here, on what dates you ordered cotton to be sold, and in what quantities, and at what prices, in November, 1904.

A. We began selling on November 10th.

Q. What was the quantity?

A. 1800 bales and 200 bales—2000 bales on November 10th. November 17th, 2000 more. November 18th, 1000. November 23rd, 1000. Do you want all of them?

Q. Yes; I would like to have all of them.

A. November 28th, 5000 bales. November 29th, 5000 bales. That was with Waterhouse; that was Liverpool.

Q. Then all the Liverpool business was done in that month between the 10th and the 29th, did you say?

115 A. Yes, sir.

Q. Of November?

A. Yes, sir.

Q. Upon what information were you selling cotton with the expectation of making a profit in December?

A. On Mr. Haas's reports.

Q. Mr. Haas's reports in writing or verbally?

A. No, sir; verbal.

Q. And he told you his information came from where?

A. From Washington.

Q. From Washington?

A. From Mr. Holmes.

Q. And that Mr. Holmes was letting you know, from the 10th to the 29th of November, what the December 3rd cotton crop report would be?

A. Not exactly; but that he was sure it would be very bearish.

Q. He was sure it would be very bearish?

A. Yes, sir.

Q. Did Mr. Haas or Mr. Holmes tell you how he knew that so long in advance?

A. No, sir.

Q. Was any explanation ever given to you?

A. No, sir; except that he had ways of getting information as to conditions.

Q. You say "except ways of getting information"; what were they?

A. As to conditions; I don't know how.

Q. You understood that in some way between the 10th and the 29th of November Mr. Holmes was getting information which enabled him to say what the cotton crop report in December would be?

A. Yes, sir.

Q. And communicating that information to you through Mr. Haas?

A. That is, not exactly what it would be, but——

Q. I mean, approximately.

A. Yes, sir.

Q. He was letting you know near enough what it would be that you felt quite sure you could put in a very large sum of money with a certainty of making a profit on it?

A. Well, it was with the understanding that we would know positively what it would be in time enough to get out in case we were wrong.

Q. Oh! Well, was the time fixed when you would be advised?

A. Yes, sir.

Q. And what was the time?

A. Well, we were always to know the day before.

Q. You were always to know the day before?

A. Yes, sir.

Q. Just what the figure would be?

A. Yes, sir.

116 Q. And you were also told—was it Mr. Holmes who told you that he did not pay much attention to any reports except those of the State agents and the special agent?

A. Yes, sir.

Q. He told you that himself?

A. He did.

Q. Did he tell you at what time they came in?

A. No; he did not tell me that.

Q. Did not Mr. Haas tell you, along between the 10th and the 29th of November, that the cotton crop report would be bearish?

A. That is what they thought then.

Q. What do you say?

A. That is what they thought.

Q. I suppose the market for cotton goes up and down like other things in your exchanges over there in New York?

A. Yes, sir; it does.

Q. How were you guaranteed that you would not lose this money before the 2nd of December would come around?

A. Well, we had additional security in following Price's operations, who was a very large operator.

Q. Oh, yes; I would like to know about that. What was the name of Mr. Price's firm?

A. Mr. Price does business through different firms, the same as I did.

Q. He is one of the largest cotton operators there; is he not?

A. Yes, sir.

Q. And the newspapers that give accounts of these things pay a great deal of attention to whether Price is buying or selling cotton?

A. Yes, sir.

Q. And you were getting information through Haas?

A. Yes, sir.

Q. Of what Price was doing?

A. Yes, sir.

Q. You understood that Mr. Haas was betraying Mr. Price in that regard; did you not?

A. I understood that he knew what Price was doing.

Q. I ask you if you understood he was betraying his employer?

A. I don't know as he was betraying him.

Q. Did you understand that——

A. (Continuing:) Because it was not injuring Price any.

Q. That is not an answer to my question. Did you understand from Mr. Haas that Mr. Price did or did not authorize him to communicate to you what Price was doing in buying and selling?

Mr. BAKER: I object to that on the ground that it is immaterial, if the Court please.

A. No, sir——

The COURT: I do not think it could be excluded—the moral quality of the witness's conduct throughout.

(By request, the stenographer read aloud the pending question.)

117 A. I did not understand anything about it.

By Mr. WORTHINGTON:

Q. You asked no questions?

A. No, sir.

Q. As a matter of fact, did Mr. Haas tell you in November that Price was selling?

A. He did.

Q. So that you had that to aid you in your operations?

A. Yes, sir.

Q. Are you able to tell us whether, in your own mind, you attached more importance to what Haas told you Price was doing or to what Haas told you about what the Government crop report in December would be?

A. I attached more importance to the Government crop report.

Q. Decidedly more?

A. Yes, sir.

Q. I think I have asked you this before, but I would like to make sure of it: Did either Mr. Haas or Mr. Holmes tell you where Mr. Holmes got the information upon which he was enabled to say as early as the 10th of November that the cotton crop report in December would be bearish?

A. No, sir; I don't remember that he did.

Q. Did any of them ever tell you that none of these crop reports came in until a day or two before the report day—I mean, neither the State agents' nor the special agents' reports?

A. Yes, sir.

Q. But they did not tell you where he got the information by which he was going to tell what they were going to be before they came in?

A. They did not pretend to tell me what they were going to be, only that they expected that they would be bearish or bullish.

Mr. WORTHINGTON: Now have we got the material here for telling when he made these sales through Hubbard?

(Certain books and papers were handed to Mr. Worthington.)

Mr. LESTER: Where are the reports? These are the books; but where are the little orders with those yellow slips attached?

(Certain other papers were handed to counsel for the defendant.)

By Mr. WORTHINGTON:

Q. Mr. Van Riper, I think you said that Mr. Holmes told you that Mr. Hyde always adopted his recommendations; or did you say that Haas told you that Holmes told him that?

A. Yes, sir; Mr. Holmes told me that Mr. Hyde took his recommendations.

Q. Did he tell you why, if that was so, that they wanted to get rid of Mr. Hyde?

A. For fear that Mr. Hyde might at some time overrule them.

Q. Oh! Just on the prospect that some time he might not accept Mr. Holmes' recommendations?

A. Yes, sir.

118 Q. What is your age, Mr. Van Riper?

A. Forty-two.

Q. Where were you living when you attained the age of man, twenty-one?

A. I lived in Nebraska.

Q. I beg your pardon?

A. In Syracuse, Nebraska.

Q. How long did you live there?

A. I lived there from 1880 to 1885.

Q. Then where did you go?

A. I came to New York.

Q. How long did you stay in New York?

A. I was here from 1885 to 1889.

Q. Then where did you go?

A. I went to Chicago.

Q. Then you went to Chicago?

A. Yes, sir.

Q. How long did you live in Chicago?

A. In Chicago until 1897.

Q. Then where did you go?

A. To New York.

Q. And you have lived there ever since?

A. Yes sir.

Q. What were you doing when you were in New York the first time, before you went to Chicago?

A. I was contracting and building.

Q. Contracting and building, did you say?

A. Yes, sir.

Q. Anything else?

A. I speculated a little occasionally.

Q. Were you in business, speculating as a business, or making an occasional "flier"?

A. No, sir; just merely on my own account.

Q. Then you went to Chicago. How old were you when you went to Chicago, Mr. Van Riper?

A. I went there in 1889; about twenty-five.

Q. And you were in Chicago from 1889, did you say?

A. 1889 to 1897.

Q. Eight years. What were you doing there during those eight years?

A. I was in the contracting business there up to 1894, and then I went into the brokerage business.

Q. What do you mean by "the brokerage business"?

A. The commission brokerage business.

Q. General brokerage business?

A. Yes, sir; stocks and grain.

Q. Were you in by yourself or with somebody else?

A. I was in by myself there.

Q. Did you have a firm name?

A. Yes, sir.

Q. What was it?

A. Van Riper & Company.

119 Q. How long did you carry on business as Van Riper & Company?

A. I don't remember the exact time; a year or so.

Q. Then what?

A. I came to New York after that.

Q. I understood you to say you were in Chicago from 1889 to 1897?

A. I went in business there, into the brokerage business, in 1894, and I ran the firm of Van Riper & Company—I can't swear the exact time; and then, after that, I took a position with the firm of Robert H. Kelley & Company for about a year.

Q. Yes—Robert H. Kelley?

A. Yes, sir.

Q. What was your position with Kelley?

A. I was general manager of the business.

Q. Were you not connected with any other business except that which you carried on in your own name and that of Kelley?

A. No, sir.

Q. Do you know a man named Van Winkle?

A. Yes, sir.

Q. Did you have any business relations with him?

A. Oh, I forgot about that. I was employed in his office about three weeks as a clerk.

Q. As a what?

A. I was a clerk in his office about three weeks.

Q. What was his business?

A. He was running a brokerage business there.

Q. Any special kind of brokerage business?

A. Yes; I found out it was a bucket shop business.

Q. You found that out?

A. Yes sir.

Q. He was one who carried on this kind of business where you send circulars over the country; was he not?

A. Yes, sir.

Q. What?
A. Who do you mean?
Q. That was a business where you sent circulars to people all over the country?
A. Yes, sir.
Q. Telling them that you could make money for them by speculating?
A. Yes, sir.
Q. He kind of went to pieces before long; did he not?

Mr. BAKER: I object to that, if your Honor please.
The COURT: I do not think it is important to follow that any further.
Mr. WORTHINGTON: I would like, your Honor, to have the opportunity to show somewhat in detail the character of business which the witness has been engaged in.
The COURT: I do not think whether that business went to pieces or not is material. I think you have a right, and I shall allow you, to follow pretty thoroughly his career, if you wish to.

By Mr. WORTHINGTON:

Q. Was Mr. Van Winkle indicted?

Mr. BAKER: I object.
The COURT: That may be excluded.

By Mr. WORTHINGTON:

Q. While you were with him did you surreptitiously obtain a list of the persons to whom he had been sending out circulars?
A. No, sir.
Q. Did you get one at all?
A. No, sir.
Q. Either while you were with him or afterwards?
A. No, sir.
Q. In the business that you carried on under the name of Van Riper & Company did you send out these circulars?
A. I did some mail business; yes, sir.
Q. I beg your pardon?
A. We did mail business as well as local business.
Q. In which you informed the people to whom you sent them that that you suggested they send you money and put it where you could speculate with it?
A. I would not say that. We did a regular brokerage business, issued market letters in the regular way.
Q. I suppose you have not one of those circulars handy?
A. No; I am sure I have not, so long ago as that.
Q. I beg pardon?
A. Not so long ago as that.
Q. What about Kelley & Company? Was he still carrying on business when you went to New York?

Mr. BAKER: I object to that.

The COURT: Kelley & Company? Is that one of the firms he was with?

Mr. BAKER: He worked for them; yes. Now the question is whether they were still carrying on business when he went to New York?

The COURT: I do not see any importance in that.

Mr. WORTHINGTON: These are matters entirely within your Honor's discretion.

The COURT: I will exclude that.

By Mr. WORTHINGTON:

Q. Was Kelley arrested?

Mr. BAKER: *O* object.

The COURT: I will exclude that.

By Mr. WORTHINGTON:

Q. Was not the business which Kelley was carrying on that of obtaining money by fraudulent use of the mails?

A. No, sir.

Mr. BAKER: I object to that.

A. It was not.

121 The COURT: I will permit that.

Mr. BAKER: He has answered it.

Mr. WORTHINGTON: He has answered it "No"?

Mr. BAKER: Yes.

By Mr. WORTHINGTON:

Q. What was the business exactly, that Kelley carried on?

A. A regular brokerage business; a brokerage commissioner business.

Q. Were you connected with Kelley at the time you moved to New York?

A. No, sir.

Q. How long before you went to New York had you left Kelley?

A. I don't know exactly; a few months before.

Q. What were you doing during that three months?

A. I was engaged in—I hardly know how to describe it; it was some kind of a patent pie-crust preparation that some fellow had in Chicago by the name of Williamson. I took that up and started to put it on the market.

Q. Patent pie-crust?

A. Yes, sir; prepared flour.

Mr. WORTHINGTON: I suppose I cannot ask whether the patent pie crust was a success or a failure?

The COURT: I do not think that would indicate anything that would help the jury.

Mr. WORTHINGTON: I think prima facie that would be a criminal business.

By Mr. WORTHINGTON:

Q. After you went to New York, what business was that you were in there, and with what firms or corporations were you connected?

A. I was with Lawrence & Simons for a while, until they failed in 1898. Then I started to speculate on my own account. I thought I knew all about the market by that time, and tried my hand at that.

Q. Yes.

A. Then from that I organized the New York Mailing and Advertising Agency. I owned that and ran it, managed it, up to a year ago, the first of January, when I sold it out. Then I bought control of a railroad out in Idaho, and I have been out west quite a good deal for the last year. In fact, I have been in Goldfield most of the time, operating some leases there.

Q. Have you stated all the concerns you have been connected with since you moved to New York?

A. Why, substantially all that I have been personally identified with.

Q. Were you not president of a Chemical Company there?

A. Yes, sir.

Q. What was the name of the Company?

A. The Van Riper Chemical Company.

Q. What branch of the chemical business was that company engaged in?

A. Oh, just making bed bug powders.

122 Q. Bed-bug poison?

A. Various insect powders.

Q. Was that the entire business of the Van Riper Chemical Company?

A. Yes, sir; practically, as far as I remember.

Q. I have been asking these questions while we were waiting for these exhibits. I wish you would look now at these memoranda and give us the dates when you sold cotton in November, 1904, through the firm of Hubbard Brothers & Company?

A. November 22nd, 1904, 1000 bales. November 23rd, 200 bales. November 25th, 700 bales. November 28th, it says "ten bales," but I think it is a thousand. I think that means "ten hundred."

Q. Yes; you would not deal in ten bales?

A. No. Then there are two fives after that; that would be 2,000. Again on the 28th, 1,000. On the 29th, 1,000. November 30th, 3,000. December 1st, 1,000 and 3,000. That is as these memoranda appear. I am not positive that these are exactly accurate.

Q. That agrees with your general recollection, I suppose, of the time you made these sales?

A. Yes; that is substantially correct.

Q. The great bulk of the sales which you made upon which you realized this large profit in December, 1904, were sales that were made in the month of November?

A. Yes, sir; but they were not bought in until after the report. They were not bought in until after December 3rd.

Q. That is exactly what I want to get at. You sold it in Novem-

ber upon information as to what the December report was going to be; and then when it turned out to be what you expected it to be, you bought?

A. Yes, sir.

Q. Perhaps you can enlighten me a little about that. You say you sold cotton and you bought cotton. You have speculated a good deal in cotton over there, I suppose?

A. Yes, sir.

Q. You have bought a great deal?

A. Yes, sir.

Q. Did you have any warehouse to keep it in?

A. Now sir; I never had any delivered to me.

Q. And when you sold you did not deliver any?

A. No, sir.

Q. You settled on differences?

A. Yes, sir.

Q. You never expected to deliver any when you sold it?

A. No; I do not think I had that in mind.

123 Q. You never expected to get any when you bought it?

A. No, sir.

Q. It was speculation pure and simple?

A. Purely.

Q. Mr. Van Kiper, are you not mistaken in saying that you bought back all this cotton after the December 3rd cotton crop report? Did you not buy a lot of it back before?

A. I did not mean to say that I bought it all back. I bought the bulk of it back after the report came out.

Q. Give us the dates.

A. And I probably made some "scalps" in between there, what we call "scalps"—that is, bought and sold, and sold it out again.

Q. When you sold and bought back in November, did you make any profit?

A. Yes, sir.

Q. Is that part of this $167,000 profit?

A. Yes, sir.

Q. Then how much of this profit had been made before the December crop report was out at all?

A. My recollection is that on the cotton closed out, that was sold in November, the profit was eight thousand three hundred and some odd dollars.

Q. When you were doing this business which you call "scalping," were you doing that on information that purported to come from Mr. Holmes?

A. I did it at Mr. Haas's request.

Q. I beg pardon?

A. Mr. Haas asked me to do that.

Q. Did he tell you that he wanted you to do it because of anything Holmes was communicating to him?

A. I do not know that he did at that time.

Q. Do you remember what he told you as any reason for letting [illegible] any part of that cotton?

A. Well, he said that Price would probably take in a little of the short cotton, and that it was a good place to cinch a profit.

Q. Did you sell it to Price?

A. I don't know who we sold it to.

Q. There was not any reason in the world why Mr. Haas, by this operation, knowing that Mr. Price was selling cotton, might not be having somebody else buy it, and vice versa?

A. He claimed to know just what Price was doing.

Q. And you understood he was communicating that to you so that you could use it for your profit?

A. Yes, sir.

Q. And that you and Haas and Holmes were to divide that, and Peckham?

A. Yes, sir.

Q. So that you were engaged, in part at least, in a scheme of speculating there which had not anything to do with the crop reports?

124 A. It was all taken in under one general agreement.

Q. You all were in together?

A. Yes, sir.

Q. Did any of you use the information which you got from your general knowledge of these matters in deciding whether you would buy or sell?

A. Certainly.

Q. What?

A. We certainly did.

Q. There is some pretty valuable general information which comes out in some of the newspapers; is there not?

A. Well, it is generally discounted before it is published.

Q. Oh, you had other ways of getting information?

A. Well, we used every way we could.

Q. Did you not understand that Mr. Price had men in the cotton regions who were reporting to him?

A. Yes, sir.

Q. And that you were getting that information through Haas?

A. Yes, sir.

Q. For your benefit?

A. Yes, sir.

Q. What other sources of information did you have besides what was supposed to come from Holmes, what you knew of what Price was doing, and the information that Price would get from his people down in the cotton regions? You said it was generally discounted before it appeared in the newspapers?

A. General knowledge of the market movements.

Q. You kept yourself pretty well informed, did you not, on the prospects?

A. I tried to; yes.

Q. Well, you did, as a matter of fact; did you not, Mr. Van Riper?

A. Yes, sir; the best I could.

Q. You were a pretty well-informed man on the subject, without any regard to surreptitious information from Mr. Holmes?

A. I tried to be. I don't know whether I could be called an expert in that line; but I tried to.

Q. You tried to be. We will excuse your modesty if you say that you were. As a matter of fact, now, you were a pretty well-informed man on that subject, and you are still?

A. I thought I was; yes.

Q. Did you not issue a periodical or book called "Ins and Outs of Wall Street"?

A. Yes, sir.

Q. "By a Successful Speculator"?

A. Yes, sir.

Q. When did you get that out, Mr. Van Riper?

A. Oh, I issued several editions of it.

Q. And is it running still?

125 A. Why, I am getting letters asking for it all the time.

Q. When did you begin publishing that?

A. In 1898, I think, or 1899.

Q. Soon after you went to New York?

A. Yes, sir.

Q. So that you did hold yourself out to the public as a successful speculator and well-informed man about these matters?

A. At that time I thought I knew it all, pretty near.

A. I guess you have found out that nobody knows it all?

A. I found out differently later.

Q. Along in 1901 did you consider yourself pretty well advised about it then?

A. Well, I was at that time; yes.

Q. As a matter of fact, Mr. Van Riper, you were speculating in cotton, and you were getting information from every source you could to help you do it profitably?

A. Certainly.

Q. Is not that so?

A. Yes, sir.

Q. And one of the factors was the information which you supposed you were getting about the Government crop reports in advance?

A. Yes, sir.

Q. Was there anything said at any time about having these reports "doctored" so that they would come out the way you folks wanted them to be?

A. There was afterwards.

Q. When was that?

A. In connection with this June report.

Q. There never had been anything said on that subject before that time?

A. No, sir.

Q. Are you quite sure about that?

A. I don't recall that there was.

Q. What do you say?

A. I don't recall that there was.

Q. There is a letter put in evidence here by the Government, you will remember, which you say, as I understand, is in Mr. Peckham's

handwriting, and addressed to you, in which he says: "Holmes has padded matters;" I think that is his expression. (After a consultation:) Oh, "The Colonel has padded matters," meaning Holmes. Now, I understand you to say you do not know what that meant?

A. I did not know at that time what he meant, exactly.

Q. And you did not have curiosity enough to ask Mr. Peckham what it meant?

A. I may have; I don't recall that I ever did.

Q. You have never been indicted, Mr. Van Riper?

126 Mr. BAKER: I object.

Mr. WORTHINGTON: I propose to go to work now to show a motive in this business.

Mr. BAKER: Do you mean indicted in this case? Is that what you refer to?

Mr. WORTHINGTON: Yes.

Mr. BAKER: Oh, I do not object to that.

Mr. WORTHINGTON: Oh, no; I do not care to go into anything else. I meant in this case.

Mr. BAKER: I do not object to that.

By Mr. WORTHINGTON:

Q. You have not been indicted at all or arrested in connection with this alleged arrangement with Mr. Holmes?

A. No, sir.

Q. How did you get out of it?

A. I never had any fear of it?

Q. Because you were not in it or because you did not think it was any offense?

A. I did not think that I had committed any offense.

Q. You found out that Mr. Holmes and Mr. Haas and Mr. Peckham had been indicted?

A. I learned it; yes, sir.

Q. The Government claims that it was a criminal offense; you were in it the same way they were, were you not?

A. Not exactly.

Q. Just tell us what was the difference, as you understand it, between your situation and theirs?

A. Well, in the first place, they brought the scheme to me. I had nothing to do with originating it or planning it. They came to me to get me to operate.

Q. You did not understand——

A. I was looking for advance information, and as long as Price was getting it, or any one else, I thought I had a perfect right to get it.

Q. You did not think there was anything wrong in your carrying out the scheme and carrying on the operations and dividing the proceeds and giving Mr. Holmes his share?

A. I did not give Mr. Holmes his share.

Q. What?

A. I never gave Mr. Holmes anything.

Q. Well, you gave it to Mr. Haas, understanding that it was to go to Mr. Holmes?

A. Yes, but I did not know that until I saw him give it to him.

Q. Where did you first learn that Mr. Holmes was to get any share of these profits?

A. I first learned it on December 11th or 12th or 13th—one of those three dates.

Q. 1904?

A. Yes, sir.

127 Q. Up to that time, so far as you know, then, Mr. Holmes was not in any arrangement with anybody to receive any compensation for disclosing Government secrets?

A. He told me he was doing it for friendship for Peckham at the start.

Q. That does not answer my question, quite, Mr. Van Riper.

A. I beg your pardon; what was the question?

(The stenographer read aloud the pending question.)

A. No; not positive. I had no positive knowledge of it.

Q. I want to know whether you had any knowledge or suspicion, prior to that, that he was being paid for what he was supposed to be doing in the way of giving out information about the cotton report?

A. He told me that he had received certain moneys from Price through Haas.

Q. Did you understand from that that he was being compensated indirectly for giving Haas information?

A. Yes; yes, sir.

Q. Then you did understand that you were carrying out a scheme by which a government officer was to benefit for disclosing government secrets?

A. I know that he said he was getting money through Haas from Price, but I never agreed to pay him any money.

Q. Then prior to the middle of December, the 11th or 12th or 13th, along there, you did not have any suspicion that Mr. Holmes was getting paid for what you were engaged in, that he was to get a part of it?

A. I may have had suspicion, but I had no knowledge.

Q. You did not ask any questions?

A. No, sir.

Q. That is the reason that you think that you were not guilty of anything?

A. I think I had a right to get the information if I could.

Q. And to pay a Government officer for giving it?

A. I did not pay any government officer.

Q. Well, you said you had your suspicions that he was getting something. Is that where you draw the line?

A. Yes; that is where I draw the line.

Q. You said something about the money being divided into four parts. Oh, that was in December; was it?

A. Yes, sir.

Q. When did you first tell anybody about this arrangement which

you say was made with Mr. Holmes as to giving information—anybody outside of those interested?

A. I consulted my attorney about it in December.

Q. What date in December?

A. I could not swear as to that.

Q. What do you say?

A. I could not swear as to the exact date.

Q. Was it before or after the division was made, as you say, of these profits which were made on the cotton report of December 3rd?

A. I think it was before.

Q. Before that?

A. Yes, sir. No; it was between the December 11th and the December 30th settlement.

128 Q. It was between the settlement that was made of the December 3rd business and what you call the ginners' report profits?

A. Yes, sir.

Q. Of course nobody can ask you what you said to your attorney or what he said to you; but I might ask you why you went to a lawyer?

Mr. BAKER: I object to that.

The COURT: I think I will permit that.

A. Well, I went to see if there was any danger in doing business in this way.

By Mr. WORTHINGTON:

Q. Then after you had seen your lawyer, you went on with the business?

A. Yes, sir.

Q. When did you first tell anybody else besides your lawyer about this arrangement which you say was made with Mr. Holmes?

A. I think it was—do you mean the date or the party?

Q. I would like to know the person and the date and all about it.

A. Well, it was around June, just after the June 3rd report.

Q. Just after the cotton crop report of June 3rd, 1905?

A. Yes, sir.

Q. Who was it you told, and how did you come to tell him?

A. I talked it over with Mr. Judd, and may have talked it over with two or three others.

Q. You may have talked it over?

A. I think I talked it over with Mr. Taylor, my attorney, at that time.

Q. Who was Mr. Judd?

A. He was formerly in my employ at the New York Mailing and Advertising Agency. He was General Manager there for me—a sort of a confidential man.

(The Court thereupon took a recess until 1:15 o'clock p. m.)

129 After Recess.

L. C. VAN RIPER resumes the stand for further cross examination.

By Mr. WORTHINGTON:

Q. Before going on with what I was asking you about before recess, I want to see what you can tell us about how you made a loss of twenty or thirty thousand dollars in June, 1905. Was that because the Government Crop Report for June turned out to be different from what you had been advised, or because the market did not respond to it?

Mr. BAKER: I object to that because he did not testify that he lost that.

By Mr. WORTHINGTON:

Q. Didn't you say that in the June operation you lost twenty or thirty thousand dollars?

A. I said the trade showed a loss at that time.

Q. What did you mean by that?

A. I meant that if it had been closed out then it would have shown that loss.

Q. If you had closed out at the figure at which the market stood, after the Report was published, you would have lost twenty or thirty thousand dollars?

A. Yes, sir.

Q. Was that because the Crop Report turned out different from what you expected or because the market did not respond as you anticipated?

A. It was because Haas had told me to buy and he had then given me the wrong figures on the 31st of May. Then he had come down and seen Mr. Holmes at the instance of Mr. Price, and they had made the figures more bearish than he had reported they would be before.

Q. When did you first get information as to what the June report would be?

A. On May 31st.

Q. Did you buy or sell prior to May 31st?

A. I bought on May 31st, on Haas' calling me up from Baltimore.

Q. You did not buy any in May prior to that?

A. Not to my recollection. I was trading all the time more or less; but not on this.

Q. With what broker or brokers did you deal with reference to your purchase of cotton, after the 31st of May and up to the 3rd of June, 1905?

A. I was dealing with Hubbard Brothers and L. H. Mercer.

Q. And with those only?

A. I am not positive; but I think I also bought a little cotton in Liverpool. I am really not positive of that; at this time.

130 Q. What is that name?

A. In Liverpool.

Q. With this same firm in Liverpool?

A. No; with A. J. Bustin & Company.

Q. At that time you were carrying on business as a broker?

A. No, sir.

Q. Were you not, in 1905?

A. No, sir; I was running the New York Mailing and Advertising Agency.

Q. Then I have forgotten about the dates. You were carrying on business as a broker at some time in New York; were you not?

A. No, not as a broker.

Q. As a discretionary broker, then?

A. I never called it that. I was operating and speculating.

Q. You were sending out circulars while you were in New York, to different people?

A. Yes, sir.

Q. Stating that you would help them to make money in the market?

A. I was managing accounts at one time, in 1898, 1899 and 1900.

Q. Managing accounts?

A. Yes, sir.

Q. For these people to whom you would send circulars, and who would invest their money on your recommendation?

A. Yes.

Q. What I am trying to get at is whether you kept any books showing what your operations were; and how it happens you have only little slips of paper here instead of books?

A. I didn't keep any books of these accounts.

Q. Did you keep books at all?

A. Not of these speculations.

Q. Of any speculations?

A. No; I don't think I had any at that time.

Q. Did you keep books showing speculations in 1902?

A. No.

Q. In 1903?

A. No.

Q. In 1904?

A. No.

Q. In 1905?

A. No.

Q. You say "Not at this time." At what time did you keep them?

A. I kept books when I had a large number of accounts.

Q. When was that?

A. From 1898 to 1900 I kept books.

Q. You have not anything, then, to show your transactions involved here, except these memoranda on little loose pieces of paper?

A. No, sir; except these statements of different brokers.

Q. Nothing that you kept yourself?

A. No, sir.

131 Q. Now I will go back to what I was asking you about when we took a recess. I was asking you how you came to disclose these proceedings and in which you had been engaged, and

you told me you had spoken with Mr. Judd, and also with your lawyer. When was that?

A. That was after the June 3rd report.

Q. How soon after the June 3rd report?

A. Right away after—right after that.

Q. You mean June 4th or 5th?

A. It is possible it was that very day.

Q. What did you do besides speaking to Judd and to your lawyer about it?

A. Do you mean what I did or what Judd did?

Q. What did you do, or what did you get anybody to do, in the way of having this thing disclosed?

A. Mr. Judd wired for Richard Cheatam, of the Southern Cotton Association, and had him come to New York.

Q. Did he do that with your knowledge and your suggestion?

A. Yes, sir.

Did Cheatam come?

A. He did.

Q. What was done about it? Go on and tell the jury what was done. I want to find out what your motives were in telling this story to Mr. Holmes?

A. What do you want me to say?

Q. I want you to go on and tell all you did about disclosing this thing. It seems that it did come out, and I want to see if you had anything to do with its coming out, what you did and why you did it?

A. I showed Cheatam these letters and other letters, and told him about it, and he and Judd came down to see the Secretary.

Q. Secretary Wilson?

A. Yes, sir.

Q. When was that?

A. That was just as soon as Cheatam got up to New York.

Q. Was it early in June some time?

A. Yes, sir.

Q. What next happened, so far as you know?

A. The next thing they came back to New York and said that Mr. Wilson had given them a very cold shoulder, and that he practically told them he didn't believe any such report as that, and then they asked me to come down with them, so I came down with them.

Q. Can you fix the date when you did that?

A. I am not positive; but I think it was June 9th that I came down here.

Q. Now go on.

A. I saw Mr. Wilson and I told him about this manipulation of the June report, and he suspended Mr. Holmes.

Q. Did you give him any statement in writing?

A. No, sir; I don't think I did.

132 Q. You made an affidavit, did you not, Mr. Van Riper?

A. Yes, I think I did. I had forgotten that I had made an affidavit.

Q. Did you make that in New York or after you came down here?

A. I made it in New York.

Q. Did you do that before Mr. Cheatam and Mr. Judd came down here?

A. No, I did it when they came back here, if I remember correctly. I think they came back and asked for it.

Q. Did you go before a notary or any official and make oath to the paper?

A. Yes, sir.

Q. Before what officer or notary public?

A. I don't remember now. It was somebody over in that building at 43 Exchange Place, I think.

Q. When you came down here did you bring the affidavit with you?

A. I guess they brought that down when they came. I have forgotten exactly about that.

Q. You gave it to them to bring down here?

A. I guess that was the way that was done.

Q. You gave it to them and authorized them to give it to the Secretary?

A. I think so.

Q. Did you ever see it afterwards?

A. No, sir.

Mr. WORTHINGTON: Mr. Beach, I called upon Secretary Wilson for that paper and he says that he turned it over to you. I would like to have it.

Mr. BEACH: If we have it you can have it.

Mr. WORTHINGTON: You certainly know whether you have it or not.

Mr. BEACH: I would like to have a little more notice when you call for papers, Mr. Worthington. I have got a great many papers here. Mr. Adkins tells me that he cannot produce the paper but that he has got a copy of it.

Mr. WORTHINGTON: If you know, in the office, that it is a copy, it will do me just as well.

Mr. BEACH: We will have to look for it.

By Mr. WORTHINGTON:

Q. Have you ever seen that affidavit or what purported to be a copy of it, since you gave it to Mr. Cheatam or Mr. Judd to give to the Secretary?

A. I don't remember that I ever have.

Q. When you came down here and saw the Secretary, did you tell him what you have told here?

A. Substantially.

Q. Substantially the whole story?

A. No, I didn't tell him all of it.

133 Q. What part did you tell him and what part did you keep back?

A. I didn't tell him very much.

Q. That does not help us a bit. I want to know what part you told him and what you did not?

A. I don't remember just what I told him. It was understood by me that I was to have a copy of the statement and have the right to correct it before it would be given out, and before anybody should see it; but I never have seen it since.

Q. You were to have a copy of the affidavit or a copy of the statement?

A. A copy of the shorthand notes that were taken.

Q. You went down to his office and made a statement and it was taken down by a shorthand writer?

A. Yes, sir.

Q. Who were present?

A. Mr. Cheatam, Secretary Wilson and myself, and I think Mr. Walsh and the stenographer.

Q. Mr. Richard Cheatam, whose name appears on the back of the indictment we are trying, was the man you are speaking of?

A. Yes, sir.

Q. Do you know where he is now?

A. No, sir.

Q. It is well known that he is living; is it not?

Mr. BAKER: I object to that as being immaterial and being improper cross-examination.

The COURT: It is simply used to identify the man, I suppose.

Mr. WORTHINGTON: It is more than that. I understand it is the duty of the District Attorney, if he can, to have present the witnesses who are on the back of the indictment.

Mr. BAKER: I do not understand that to be the law at all.

The COURT: We will not enter into a discussion of that question at present.

Mr. WORTHINGTON: I will have something to say about that later on. I now, however, formally request the District Attorney to have him here.

Mr. BEACH: Mr. Worthington has been advised for the last ten days that we did not expect to call Mr. Cheatam.

The COURT: You need not make any statement about that. The request of defendant's counsel will appear in the record, and that is all that is necessary.

By Mr. WORTHINGTON:

Q. When you were making this statement, these persons being present and the statement being taken down by a stenographer, did you, in substance, tell them that there had been an arrangement made between Mr. Holmes, Mr. Haas, Mr. Peckham and yourself to speculate in cotton, partly and largely upon information which Mr. Holmes was to give you?

134 A. I don't remember whether I did or not.

Q. Do you know whether you gave away this alleged conspiracy?

Mr. BAKER: I object to that question. If they expect to contradict this witness by what he said before the Secretary they have a

right to put a proper question to him; but to go into everything that he told the Secretary, without giving him the substance of what they allege he said to the Secretary, to my mind is immaterial.

Mr. WORTHINGTON: I submit, your Honor, that when the time comes that I offer to contradict him and I have laid the proper foundation, the question will arise. But I am now trying to get from this witness, with some difficulty, as your Honor will observe, whether or not at that time he disclosed the alleged crime, for the purpose of finding out when he disclosed it, and then finding out what his motive was, in order that the jury may have that before them in weighing his testimony.

The COURT: I will permit this as a matter of discretion.

By Mr. WORTHINGTON:

Q. Do you remember whether you gave away this alleged conspiracy?

A. I don't think I told him anything about it.

Q. What did you go there for, then, Mr. Van Riper?

A. I went there to have the cotton report corrected, and to save myself from financial ruin. I felt that I had been thrown down by these people and left to hold the bag.

Q. You understood that Mr. Haas had given you incorrect information?

A. I understood that he got me to buy cotton when he knew that Price was selling cotton right then, and then they came down and had these figures fixed to suit Price. Then he promised to put up his money and he didn't do it.

Q. You felt very much irritated towards Mr. Haas on that account?

A. I certainly felt very much irritated.

Q. Did you have any information or knowledge as to what Mr Holmes had to do with that alleged betrayal of you?

A. Yes, sir. Mr. Haas told me that, in coming down on the train, he was going to see Mr. Holmes for Mr. Price, as I have already testified. Then he told me he had seen him and there would be no change. Then on the morning of the report he called me up and told me the corrected figures, which were a change.

Q. Did you communicate with Mr. Holmes at all to find out whether Mr. Haas had told you the truth about him in that regard?

A. No, sir.

Q. And when you went to the Secretary's office you mentioned Mr. Holmes' name, I suppose, as well as that of Mr. Haas?

A. Yes, sir.

Q. What did you say to the Secretary about Mr. Holmes?

135 A. I told the Secretary substantially the occurrence about this June report, in the way that the Bureau of Statistics was being used by Price.

Q. Did you tell him anything about the entire alleged transactions between you four?

A. I don't recall that I did.

Q. You confined your statement entirely to the alleged manipulation of the June report?

A. I must have told him something about the prior time, because I turned over these letters from Holmes to him at that time.

Q. You turned over these three letters you have testified here you received from Mr. Holmes?

A. Yes, sir.

Q. Running back as far as August, 1904?

A. Yes, sir.

Q. And in doing that you were influenced largely by the fact that you understood that he had helped Haas deceive you about the June figures?

A. I don't quite understand the question, Mr. Worthington.

Q. I say that in turning over these papers that you say are letters Mr. Holmes wrote to you, to the secretary, you were largely influenced by what you believed to be the fact that Mr. Holmes had been assisting Mr. Haas in deceiving you about the June figures.

A. He did not deceive me about it.

Q. I don't understand you then.

A. He gave me the figures, but they got me into the market wrong, and Haas didn't keep his part of the agreement.

Q. The figures then were exactly what you were told they would be?

A. On the morning of the report, yes sir. But it was too late then to save myself from a big loss.

Q. At what time in the day did you get the figures of the June, 1905 report?

A. I think it was before 9 o'clock.

Q. You got it by telephone?

A. Yes, sir.

Q. From Haas?

A. Yes, sir.

Q. Who was then where?

A. I don't know where he was. It was evidently local, in New York.

Q. That is what I mean—that he was in New York, not in Washington.

A. Yes, sir.

Q. About the statement that was taken down by a stenographer—you never saw it afterwards?

A. I have never seen it.

Q. Did you ask or obtain from Secretary Wilson any promise in reference to keeping any part of what you were going to tell him from the public?

136 Mr. BAKER. I object to that as being immaterial.

The COURT. It may be admitted.

A. I understood the Secretary to say that what I gave him was in strict confidence, and I reserved the right to tell them as much as I wanted to, and not to answer any questions I didn't want to answer.

Q. Do you remember whether you asked and obtained from him any promise that a certain name or names would not be given out?

A. No, I don't think I went into that part.

Q. Are you quite clear about that?
A. I don't remember it.
Q. What?
A. I don't remember it.

Mr. WORTHINGTON: Have you got a copy of that affidavit?
Mr. ADKINS: No sir.
Mr. WORTHINGTON: Can't I get that this afternoon?
Mr. BEACH: Yes, sir; you can have anything you want if you will give us notice enough. We cannot leave the trial table to run around after papers.

By Mr. WORTHINGTON:

Q. You remember when the statement was published in the newspapers about what you were said to have told the Secretary, and about these letters being published in the newspapers. You remember that fact, do you not?
A. I do remember the newspapers having a story about it; yes.
Q. They had these letters, did they not?
A. They had some of them. I don't remember just what they had.
Q. After that was published, didn't you give to the public a statement of your own in reply to it?
A. Yes, sir.
Q. To whom did you make that statement or through whom did you communicate in giving it to the public?
A. I don't know who I gave it to. I gave it to a newspaper man I know.
Q. You saw it published in the newspapers the next day?
A. Yes sir.
Q. Was it correct?
A. So far as it went.
Q. I wish you would cast your eye over this clipping from the newspaper here, headed "Innocent of wrong, he says," and let me know whether that is the statement you are talking about (exhibiting paper to witness). Have you read the article?
A. Yes sir.
Q. After reading the article what do you say about the substance of it being correct?
A. Substantially it was.
Q. After you read it in the newspapers, did you do anything in the way of having any part of it corrected?
A. No sir.

137 Mr. WORTHINGTON: I propose to read this article to the witness and ask him certain questions about it

Q. I omit the first paragraph which you see is a newspaper man's preliminary statement, and come down to where it says: Mr. Van Riper's statement is as follows:

"It came to my knowledge early in the year, without solicitation on my part, that plans were being laid to influence and manipulate

the figures of the government report on cotton during the summer months, beginning with June."

Was that true, Mr. Van Riper?

A. Yes sir.

Q. How did it come to your knowledge, without any solicitation on your part?

A. They told me about it. I have already testified to the conversation.

Q. Had you done anything, prior to the beginning of the year 1905, to dissolve the contract or arrangement you say you had with these men before that, about cotton speculations?

A. You mean prior to the year 1905?

Q. Prior to the 1st of January, 1905 had you dissolved your arrangement with them; was it at an end?

A. Yes sir; we dissolved our arrangements on December 31st.

Q. How was it dissolved?

A. I have already testified that it was at the time this money was all taken down.

Q. Was it then agreed that you would abandon the business and would not go on with it any more?

A. We settled up to that time.

Q. I understand that; but you had had previous settlements, had you not?

A. Then it was arranged that we should form a pool to operate in June, but at that time nothing was said about manipulating the figures.

Q. When did you first hear about manipulating the figures?

A. The first intimation I had of it, as I recall now, was when Haas made his trip down to Washington.

Q. When was that?

A. After he had had his interview with Price at the Waldorf.

Q. That was in May?

A. That was on the 31st of May.

Q. That was the first intimation that you had had of any attempt to manipulate the cotton crop report figures?

A. Yes sir.

Q. Then how did it come that you said to the newspapers and through them to the public: "It came to my knowledge early in the year without solicitation on my part that plans were being made to influence and manipulate the government reports on cotton during the summer months, beginning in June?

A. Well, I considered May early in the year.

Q. You considered May early in the year?

A. Yes sir.

138 Q. And this was about along the 8th of July, when you were making this statement?

A. Yes sir.

Q. Then you go on and say: "It was planned by certain interests including parties in responsible positions in the Bureau of Statistics to use influence to have Mr. Hyde sent to Europe, so that Mr. Holmes would be the acting head of the Bureau, and in this position would have a free hand to furnish such reports as wanted."

What do you mean by "certain interests including parties in responsible positions in the bureau." You use the plural. I want to know to whom you referred?

A. Mr. Worthington, I don't say that is a correct statement that I gave. That is the newspaper report of it. I don't know that I made those exact statements. I was interviewed and talked to.

Q. Then I will have to ask you whether or not you made that statement as I have read it, to the newspaper man, for publication to the world in the City of New York on the 8th of July, 1905?

A. I don't remember exactly what I did say.

Q. After you saw this in print, did you do or say anything to correct it in that respect?

A. I don't recall that I did.

Q. You next say "I was also cognizant of the fact that said Holmes had previously furnished advance information to certain brokers, from time to time, and when their plans for manipulating and changing the cotton report figures were exposed to me I immediately consulted my attorney regarding the matter, and upon his advice listened to their stories and kept back of their plans, in some cases having witnesses unknown to them, until the June report on acreage and condition of cotton came out."

I have understood you to say that this was substantially correct. What do you say as to that?

A. I don't remember making that statement.

Q. There are a good many things stated there, and I will ask you about them one at a time:

"I was also cognizant of the fact that said Holmes had previously furnished advance information to certain brokers from time to time."

A. That was true, whether I said it or not. I couldn't say about that.

Q. What I am asking you is whether you said that, not whether it is true or not?

A. I couldn't say whether I said it or not. I had an interview with a reporter.

Q. What do you say about this: "When their plans for manipulating and changing the cotton report figures were exposed to me I immediately consulted my attorney regarding the matter."

Did you do that?

139 A. I don't think I stated it in those words. I may have. I did consult my attorney.

Q. Is that true?

A. I did consult my attorney.

Q. When was it that this exposure was made and you went back to see your lawyer about it?

A. The exposure was on *in* May 31st, when Haas came down to Washington.

Q. Then you went and told your lawyer?

A. I did. I had talked to him before about these matters.

Q. Who was your lawyer then?

A. Mr. Taylor, of the firm of Macfarland, Taylor and Costello, 63 Wall Street. I also talked to Mr. J. W. Grangefield.

Q. Then when Mr. Haas told you, on or about the 31st of

May that the June report was to be manipulated down here, you went out and saw your lawyer at once; did you?

A. Yes, sir.

Q. Did you say you did.

A. I did.

Q. To see whether it would be all right?

A. For advice.

Q. For advice in that matter?

A. Yes, sir.

Q. What did you understand by the suggestion of "manipulating the figures"? What did you, in your own mind, understand that to mean?

A. From what he said, I understood that he was coming down to get Holmes to change them.

Q. To get Holmes to change the figures?

A. Yes, sir; to suit Price.

Q. To alter the figures as the reports would show them and make them conform to what you folks wanted?

A. To either alter them or change the plans. As I understood it, the figures were not made up from any definite footing. They would merely take what figures, according to their own judgment, they thought it would be best to put out.

Q. Well, that he was going to make the figures to suit?

A. They wanted to be somewhere in conformity with the conditions, to avoid criticism. That was my understanding.

Mr. BAKER: Mr. Worthington uses the expression "make the figures to suit you". There is no testimony to that effect.

Mr. BEACH: "To suit you folks."

Mr. BAKER: You could not include the witness in that statement, because he has testified that the figures were made to suit Price.

By Mr. WORTHINGTON:

Q. The next statement here is that "after consulting my attorney and upon his advice, I listened to their stories and kept back of their plans, in some cases having witnesses unknown to them." Is that true?

140 A. I do not think I am reported correctly there.

Q. What do you say?

A. I do not think that that is quoted correctly.

Q. Was it the fact about the thing intimated there?

A. I consulted my attorneys.

Q. Did you, on the advice of your attorney, listen to the stories and just hear what they were saying and have somebody listening that they did not know about?

A. I do not remember that I had anyone listening.

Q. Did you tell the newspaper man or men to whom this statement was given that in some cases you had witnesses unknown to the people who were telling you about the manipulation?

A. I could not say, Mr. Worthington, what I told them, word for word, because it is too long ago.

Q. Can you tell us whether or not you in any wise intimated to

them that you had somebody listening to what was going on, when as a matter of fact you had not?

A. I do not know.

Q. You do not know?

A. I do not know.

Q. The next thing is: "It was planned as early as March to use every effort they could to secure figures that would be as bearish as possible." Did you make that statement?

A. I have already testified to that, on Mr. Holmes' interviews with me and in my office in March, about March 8th. He told me this.

Q. What did Mr. Holmes say to you on that occasion that justified this statement?

A. He told me that he was on the way to visit the agents, some of the State agents or general agents, and was going to do everything he could to get a bearish report.

Q. Then you did make this statement, did you, to the newspaper man?

A. I do not say that I did.

Q. "It was planned as early as March to use every effort they could to secure figures that would be as bearish as possible"?

A. I do not say that I made it; I may have.

Q. Well, now, Mr. Van Riper, I understood you, after reading this clear through carefully, to say that it was substantially correct; did you not?

A. Substantially, I think, it is correct, of my knowledge at that time.

Q. Is it then, substantially correct that you said to them that it was planned as early as March to use every effort they could to secure figures that would be as bearish as possible?

A. I may have said it, because I had had this talk with Holmes in March.

141 Q. "So as to break the price of cotton to a low point, where certain interests would make large profits on the short side, and then load up and make an enormous scoop on the long side." Did you say that to the newspaper man?

A. I may have.

Q. Well, you may have said anything, you know, of course, Mr. Van Riper. My question is whether you have any recollection now that you said anything like that?

A. Well, now, Mr. Worthington, how can I remember that I said all those particular things?

Q. Why, you have told us here about many conversations that happened long before that, and given the substance of them.

A. Yes, but I could not give them word for word. I say, substantially that is the statement I made.

Q. Very well.

A. Whether I made those particular——

Q. That is satisfactory, then. "It is understood that in some cases Government agents' reports would be influenced in that direction, or even fictitious reports used." Did you tell the newspaper man that, substantially? I am not talking about words, but about substance.

A. I probably did.

Q. What was the foundation for your making that statement to the public and to the newspaper man, and through him to the world?

A. Talks I had had with Haas and Holmes.

Q. You have not told us anything about fictitious reports, as I remember.

A. I don't know that I ever used that word.

Q. This says that "it was understood that in some cases Government agents' reports would be influenced." Did you say that in substance?

A. I don't know.

Q. You do not know. As a matter of fact, had you had any intimation that any of the Government agents were to be influenced to make their reports?

A. Mr. Holmes told me he was going to visit Government agents.

Q. And use every effort he could to get a bearish report?

A. To get a bearish report; yes, sir.

Q. And you were to go in upon that statement and buy cotton; or was he just telling you this as a matter of news, without any reference to future dealings?

A. He was telling me this with reference to future operations.

Q. So that you could buy, and after the bearish report came out——

A. Mr. Haas was to keep me posted.

Q. Well, I say, was that understood between you and him? He told you that he was going to do everything he could to get a bearish report, and then you were to buy cotton and give him a part of the profit that you would make when you would sell out?

112 Mr. BAKER: I object to the question because it is not intelligible. You would not buy on a bearish report to make money.

Mr. WORTHINGTON: That is just another instance of how little I know about these things that Brother Baker is so familiar with, your Honor.

The COURT: It might not be a legal objection to the question.

By Mr. WORTHINGTON:

Q. Do you understand the question, Mr. Van Riper? It does not make any difference whether the District Attorney does or not if you do.

Mr. BEACH: Might we have the question read?

The COURT: You may read the question.

Mr. WORTHINGTON: I will withdraw the question.

The COURT: Mr. Worthington desires to put another question. I understand. This is withdrawn.

Mr. BEACH: Very well.

By Mr. WORTHINGTON:

Q. Was there anything said between you and Mr. Holmes when you had that conversation of March, 1905, about how he or you

were to benefit in any wise from this bearish report that he was going to bring about?

A. No; not at that time.

Q. Was anything said about it before?

A. I have already testified that Mr. Haas agreed to form a pool and put up $20,000 for operations. It was very natural that he and Holmes would come in and see me when they were in town, and he did frequently, or Mr. Haas did frequently.

Q. Did you yourself, in any conversation with Mr. Holmes, say anything or hear anything from him about this $20,000 arrangement?

A. This was said in his presence when it was originally planned.

Q. Oh, I see! Then you understood that when he was talking to you in March it was carrying out that same arrangement?

A. I understood that he was to when the time came to operate.

Q. Well, he was telling you in March that he was going down to the cotton region and was going to do what he could to bring about the result that he wanted?

A. Yes, and to get what information he could.

Q. Well, to do what he could to bring about a bearish report, did you not say?

A. That was what he had talked of prior to that.

Q. And you understood that that was carrying out the scheme you had previously entered into of forming a pool to operate on June cotton?

A. It was in connection with it.

Q. Yes. "On June 1st", this goes up. "I was informed
143 that it was impossible to get the condition higher than 75 per cent, and the acreage reduction to show a decrease of less than 13 per cent. in spite of all they had tried to do." That is what you told us now, I understand?

A. I told you substantially that; yes.

Q. Was it June 1st or May 31st?

A. The night of May 31st or the afternoon.

Q. "But that at the request of a certain large market operator the go-between was going back to Washington that night to try and have the figures stretched a little further." Did you make that statement to the newspaper man, in substance?

A. I don't know whether I made it but it is true.

Q. Do you remember——

A. I do not remember making that statement.

Q. Do you remember anything you said to the newspaper man on the occasion I am asking you about?

A. Yes; I remember being interviewed.

Q. Do you remember anything you said in the interview?

A. Not word for word; no.

Q. Do you remember the substance of anything you said at that interview?

A. Yes; I say that substantially is correct.

Q. What do you mean by saying it is substantially correct? I

understand you to say there was nothing said to the newspaper men about fictitious reports.

A. I do not recall saying it.

Q. Then it is not substantially correct in that particular?

A. I do not think that is substantially material.

Q. Oh, you think that is substantially immaterial about getting in fictitious reports?

A. The word "fictitious," the way you use it here, I don't recall using it.

Q. I will skip the next paragraph there. It says: "The notoriety attached to this matter is far from agreeable to me, and I was personally assured by Secretary Wilson that in bringing this matter to his attention I had done the Department a great service, and that my name would not be mentioned in any way." Did Secretary Wilson make that promise to you?

Mr. BAKER: I object to that. He has been asked that question already and answered it.

The COURT: He may be asked it now, in view of this statement which he has said is substantially correct.

A. Mr. Wilson—that was my understanding, that he was not to use it in any way.

By Mr. WORTHINGTON:

Q. Is it not your recollection that that is what he said to you, that your name would — be given out?

A. That was my recollection; yes, sir.

Q. Yes. Now, this goes on: "Now that he has seen fit to publish or to give out for publication certain letters and documents that were entrusted to him confidentially, I think it is only fair to ask
144 him to give for publication my entire statement made to him of which the above is a part, but which has been omitted in newspaper accounts which have been called to my attention."

Did you say that substantially to the newspaper man?

A. I probably did. It was true.

Q. What do you mean by saying you "had entrusted these papers to Secretary Wilson confidentially?"

A. I meant that my understanding was that it was to be treated confidentially.

Q. Is it your recollection that he stated to you that he would treat them as a confidential matter between you and him?

A. It was.

Q. Who was present when he made that promise?

Mr. BAKER: I object to —. That question does not warrant the statement of a promise.

The COURT: Suppose you adopt his own language in your question, as objection is made.

Mr. WORTHINGTON: I was trying to get it substantially the same, your Honor.

The COURT: Ask what he said and what he did about it and who was present; that is the question.

By Mr. WORTHINGTON:

Q. You say it is your recollection that he said he would treat this as a confidential matter between you and him?

A. Yes, sir.

Q. Who were present when he made that statement?

A. I think all these people that I told you were there.

Q. Mr. Cheatam?

A. I think so.

Q. Mr. Judd?

A. Mr. Judd was not present.

Q. Oh, Mr. Judd was not there on that occasion?

A. No, sir.

Q. Who were there besides Secretary Wilson and Mr. Cheatam and yourself?

A. Well, I do not know whether they were in the room when I first talked to him. When I reduced the questions and answers to writing Mr. Cheatam and Mr. Walsh and Secretary Willson and the stenographer were present.

Q. Was the stenographer a lady or a man?

A. A man.

Q. Do you know who it was?

A. No, I do not.

Q. Now, I will go on with this:

"From what I know of their various conversations and the plans which were laid months in advance. I believe that a thorough investigation of the Bureau would show that the real acreage reduction was from 18 to 25 per cent, and not 11½, as announced on June 3rd. I would suggest or ask that a further statement
145 be made or asked for from the Agricultural Department as to what they found by investigating the records of said Bureau."

Did you make that suggestion in substance?

A. Substantially; yes.

Q. And you made this statement in substance to the newspaper man?

A. Substantially.

Q. Now, you say you had not closed out the deals that you had made. You had been buying cotton prior to June 3rd, I understand, with a view of selling it when the bearish report sent it down?

A. Yes, sir.

Q. And the market went the other way?

A. Yes, sir.

Q. And you stood for a great loss?

A. Yes, sir.

Q. Unless cotton should go down in the near future?

A. If cotton had continued to go down I stood for a great loss.

Q. What do you say?

A. If it had continued to go down.

Q. If it had continued to go down there would be a big loss?

A. Yes, sir.

Q. And it was very much to your interest that it should go up?

A. Yes, sir.

Q. And if the figures could have been seen to have been wrong and could have been made what you suggest here, 18 to 25 per cent reduction instead of 11½ in the acreage, it would have been very much to your personal advantage; would it not?

A. Yes, sir; it would.

Q. About how much difference would it have made to you? About how many thousand dollars, in the way you were then?

A. I could not tell that.

Q. You cannot approximate it?

A. I have no way to approximate it, because you can't tell what the market might do.

Q. And you could not tell, if the reduction in acreage had been announced to be 25 per cent instead of 11½, just how many thousand dollars you would have made out of it?

A. No, sir.

Q. I call your attention to this next paragraph, the last one of this clipping:

"My attorney and others will back me up in the statement that I had nothing to do with the plans made by these parties to manipulate the Government figures, but merely on legal advice, and in the hope of doing a great public service, followed the plan as outlined and advised by my attorney, and at the proper time took such measures as I deemed right and just to the cotton trade and to the Agricultural Department."

146 Did you make that statement to the newspaper man, in substance?

A. I don't remember making it word for word.

Q. Oh, well, now, Mr. Van Riper, you understand the difference between "word for word" and "substantially." I am not asking you about any exact language. Did you in substance tell the newspaper man on this occasion that you had been acting in this business from public-spirited motives, to do the public a service, instead of to put money in your pocket?

A. I did do the public a service.

Q. That is not what I am asking you.

A. Yes, sir; I told them I had done the public a service, and Secretary Wilson told me so.

Q. I am asking you whether you told the newspaper men in substance, to go out to the world, that in this business about the manipulation of the June report, and everything connected with it, you were only trying to do a great public service?

A. I told them I was trying to do a great public service.

Q. As a matter of fact, you were trying to make money yourself until you found out, as you thought, that you had been "sold out"?

A. I was trying to do both. I was trying to save myself from ruin and trying to correct the evil—two motives.

Q. If the report had come out the way you expected, and the market had gone the right way, and you had made a lot, you would not have said anything about it; would you?

A. I don't know now what I might have done then.

Q. You had not any expectation, up to the time that you found there was a loss, of giving anything out; had you?

A. I can't tell now what my thoughts were then.

Q. You cannot tell whether you had or not? Very well. At all events, when you went down there you felt pretty vindictive towards Mr. Holmes; did you not?

A. No, sir.

Q. Or to Mr. Haas?

A. I did not feel very friendly to Mr. Haas.

Q. And you had no feeling at all against Mr. Holmes?

A. Not personally.

Q. Have you not told us just now that you had understood from Mr. Haas that what was done about this, what he told you, he got from Mr. Holmes?

A. I considered that Holmes was merely a tool of Haas and Price.

Q. Only a tool of Haas and Price?

A. Yes, sir.

Q. Did you have more than one interview with the Secretary about this matter in July, 1905?

A. No, sir.

147 Q. That interview occurred down in the Secretary's office, I presume?

A. Yes, sir.

Q. In the Department of Agriculture?

A. Yes, sir.

Q. I will ask you whether or not at that time you asked him to refrain from publishing certain names, on the ground that if the names were given out it might subject you to personal violence?

A. I may have.

Q. What is your recollection about it, if you have any?

A. I don't recollect positively whether I did or not.

Q. Not positively? What is your best recollection on the subject?

A. My best recollection is that I was given to understand that none of it would be published.

Q. That is not the point I am addressing myself to, now, Mr. Van Riper. I want to know whether you referred, in substance, to anticipated personal violence to you if something was published that you wanted kept out?

A. I never had any fear of personal violence from anybody.

Q. That is not the question, either. The question is whether you told the Secretary that you wanted names kept back because of your fear of personal violence?

A. I don't recall that I did.

Q. Will you say positively that you did not?

A. No; I can't say positively, but I don't recall telling him that.

Q. When, as a matter of fact, did you close out those June deals in cotton—June, 1905?

A. I could not say positively as to dates.

Q. Did you hear anything further from Mr. Holmes after you

say him in March, 1905, as to where he had gone on this projected trip to the cotton States which you told us about, and what he did?

A. Not directly; I mean, not personally. I don't think I met Mr. Holmes after that.

Q. Did you indirectly?

A. I heard through Haas.

Q. What did Haas tell you about it?

A. Oh, he was in the office frequently. He would come in and talk over things generally; nothing special.

Q. What I am asking you about, Mr. Van Riper, is what information you had as to Mr. Holmes going down south that spring or going down to the cotton regions to try and influence that report and make it bearish.

A. The next thing that Haas told me was that they had arranged or gotten Mr. Hyde appointed to go to Europe.

Q. That is not what I am asking you about, Mr. Van Riper. You have told us that in March Mr. Holmes told you he was going down to where these agents were investigating cotton matters, and going to do what he could to bring about a bearish report. I
118 am asking you whether, at that time, directly or indirectly, you learned that he had gone down there doing anything?

A. I don't remember any special conversations on that particular point.

Q. You do not recollect that Mr. Haas ever told you that Mr. Holmes had gone down there or was down there?

A. I don't remember about that.

Q. And you do not know whether, as a matter of fact, he went near any of those cotton-growing regions during that spring?

A. No, sir.

Q. Were your dealings in cotton after August, 1904, down to June, 1905, confined exclusively to the deals which you were making on behalf of the combination you have told us about?

A. No; not exclusively; principally so.

Q. Principally so?

A. Yes, sir.

Q. You were speculating in cotton on your own account?

A. I may have been. I have always been a speculator for twenty-five years.

Q. You have always been a speculator in cotton?

A. Cotton, grain and stocks.

Q. For how many years had you been speculating in cotton without any reference to this combination you have told us about?

A. Oh, I guess for ten or twelve years.

Q. And during the last half of 1904 and the first half of 1905 you were speculating in cotton from time to time on your own account?

A. Very little, if I did, outside of this.

Q. Did you not have some very considerable deals in January, 1905?

A. Oh, yes, I did; yes, sir.

Q. Was that on your own account or on the joint account?

A. It was all on my own account.

Q. On your own account?
A. Yes, sir.
Q. Do you remember whether you were buying or selling then, or both?
A. Both.
Q. You had to do both to make anything, I suppose?
A. Yes, sir.
Q. On what information were you speculating then?
A. On my own judgment.
Q. You did not get it out of your own head, I presume?
A. Well, yes; I formed my own conclusion about the market.
Q. You would draw your own conclusions from other things, would you not?
A. Yes, sir.
Q. What were those things? Where did you get your information—the points from which you gauged your speculations?
149 A. It is hard to tell now, Mr. Worthington.
Q. It was such that it was satisfactory to your mind, anyhow, to make the venture you did?
A. Yes, sir.
Q. Might I ask whether you were successful or unsuccessful in your operations that month?
A. I was both; I made and lost money in both.
Q. I mean in the whole.
A. I don't recall positively. I think I lost some money, though, I am not real sure.
Q. You cannot tell us surely whether you did or not?
A. I don't remember.
Q. Now about this first meeting that you had with Mr. Holmes, which I think you said was on the 7th of August, 1904—is that right?
A. Yes, sir.
Q. What division do you say was then agreed upon?
A. I agreed to give Peckham two-thirds of the profits.
Q. What was said about Haas and Holmes?
A. Haas's name at that time had never been mentioned, although they told me that there was a party that carried the information back and forth to Price.
Q. Well, Mr. Holmes was there?
A. Yes, sir.
Q. Was anything said or intimated as to whether or not he was to have any benefit from this arrangement—pecuniary benefit?
A. No, sir.
Q. So that so far as you were able to tell us, that whole two thirds was to go to Peckham and be his?
A. Yes, sir.
Q. Was there anything that took place to affect that matter in your knowledge until the 11th of December following?
A. Yes, sir.
Q. What was it?
A. Bring Haas into it.

Q. I beg pardon?
A. Introducing Haas to me.
Q. When was it that that happened? I have forgotten the date.
A. It was about October; somewheres early in October.
Q. And that was at the New Willard?
A. Yes, sir.
Q. You were all four there then?
A. Yes, sir.
Q. What was said then about dividing profits?
A. I agreed to give Haas three-quarters.
Q. You agreed to give Haas three-quarters?
A. Yes, sir.
Q. And you would keep the other quarter?
A. I would give Peckham a quarter, and I was—I mean, excuse me—to give Haas half, Peckham a quarter, and retain one-
50 quarter myself.
Q. What about Holmes?
A. Mr. Haas was the only one considered; Mr. Holmes was not.
Q. I beg pardon?
A. Mr. Haas got half, and Peckham a quarter, and myself a
uarter.
Q. I am asking you what about Holmes?
A. I don't know.
Q. Well, I say, was anything said or intimated?
A. No, sir.
Q. (Continuing:) At that time, about Holmes getting any of it?
A. No, sir.
Q. So that so far as you have any knowledge or direct intimation,
here was no understanding that he was to get any part of that?
A. No, sir.
Q. I ask you, when were you first informed that Mr. Holmes
xpected to participate in the profits of these speculations?
A. When I saw Haas pay him money was the first I had positive
nowledge of it.
Q. That was on the 11th or 12th of December?
A. Yes, sir.
Q. What, if anything, was said at that time as to why Haas was
aying him the money?
A. I don't think there was any explanation given.
Q. Nothing was said about it?
A. No explanation.
Q. Well, I do not know whether you draw a distinction between
explanation" and something else.
A. I didn't care what Haas did with the money. I didn't care
or any explanation.
Q. I am not asking whether you cared about it or not, but whether
nything was said at that time. I do not mean directly, but whether
nything was said or any intimation given that Mr. Holmes was to
t anything of what Mr. Haas was receiving?
A. I don't recall that anything was said about it.
Q. Was there any time after that when it came to your knowledge

that Mr. Holmes was expecting to receive any part of the proceeds of these deals?

A. Do you mean before he received them?

Q. Before or after; any time?

A. Well, the only thing I saw on this occasion was that I saw Holmes write his name in that trust agreement.

Q. You saw what?

A. I saw Holmes write his name in the body of the trust agreement.

Q. That was in the latter part of December?

A. That was at this time; this was between the 11th and the 13th of December.

151 Mr. WORTHINGTON. Oh, I beg your pardon. I thought that was later. Let me see that trust agreement—the one Mr. Holmes' name is written in, please.

(A paper was produced and handed to Mr. Worthington.)

By Mr. WORTHINGTON:

Q. That, on the face of it, refers to dividing the profits of a firm?

A. Yes, sir.

Q. A firm of brokers?

A. Yes, sir.

Q. Let us read this and see what it is. "I hereby certify" signed by Haas—"that I have this day entered into an agreement with one Frederick A. Peckham, wherein I have contributed to said Peckham the sum of Twelve Thousand Five Hundred Dollars ($12,500) towards the capital to be furnished by him for certain co-partnership agreement which he has entered into under date of December 13, 1904."

That is the partnership agreement of the firm of Mercer, Peckham & Company, or Peckham, Mercer & Company?

A. Yes, sir.

Q. Which we have heard read here?

A. Yes, sir.

Q. And which in the face of it is a partnership to carry on an ordinary brokerage business?

A. Yes, sir.

Q. (Reading:) "And that I hold from said Peckham certain agreement entitling me to the return of said Twelve Thousand Five Hundred Dollars ($12,500) from the first profits accruing, and to further interest in the profits of said business equivalent to two-fifths of the total net profits. Now, therefore, this agreement witnesseth that Edwin S. Holmes, Jr., has contributed one-half of said Twelve Thousand Five Hundred Dollars ($12,500) and is to receive one-half of all profits which I myself may receive from time to time on account of said agreement with Peckham."

Did you hear anything said, when Mr. Holmes was present, indicating that the partnership agreement and this agreement were a mere sham to cover the dealings which you were expecting to make in cotton, based upon information you were going to get about the crop reports?

A. What do you mean by a mere sham?

Q. Perhaps I have misunderstood you; I beg your pardon, Mr. Van Riper. My recollection is that you said that this partnership agreement forming that firm—that the firm was formed just for the purpose of carrying on these deals.

A. It was formed principally for convenience.

Q. Just explain what you mean by that.

A. Well, for instance, so that I could operate without having everybody in the street know that I was trading in large quantities of cotton. I could place my orders through this firm, and they could distribute them to other brokers, and the other brokers would not know who the customer was.

152 Q. Was the firm organized to do nothing except to attend to that business?

A. Just a general commission business.

Q. It was to do a general commission business?

A. Yes, sir.

Q. It was not to confine its operations, then——

A. Not at all.

Q. (Continuing:) Simply to this business of buying or selling cotton?

A. Not at all.

Q. For your alleged combination?

A. No, sir.

Q. It was, then, so far as that was concerned, an honest concern?

A. Absolutely.

Q. That brings me, then, to this: Were you present when anything was said to Mr. Holmes to the effect that this firm was to be used as a convenient method of carrying out your purchases and sales under the arrangement with him?

A. We were all present when we talked about organizing this brokerage firm for convenience, and the reasons for it were talked about.

Q. That was all talked about in his presence?

A. Yes, sir.

Q. When was that?

A. Well, at this time and a day or two before; I think the 11th of December, when he came up there.

Q. Was the money put up which the persons who were interested in this firm agreed to put up?

A. Yes, sir.

Q. Did Mr. Haas put up his $25,000?

153 A. No, sir.

Q. Or his $12,500?

A. I put it up for him?

Q. You put it up for him?

A. Yes, sir.

Q. Did he account to you for it?

A. Out of the profits of that deal?

Q. And have you any personal knowledge as to whether Mr. Holmes arranged with him about the half of it?

A. None except that after Mr. Holmes put his name in that and Haas signed it, and I witnessed it, Haas turned around and folded it up and gave it to Mr. Holmes.

Q. Haas did what?

A. Folded it up and handed it to Mr. Holmes to keep.

Q. You said something about its being destroyed and thrown in the waste basket.

A. Yes, sir.

Q. When was that?

A. On December 31st.

Q. And where?

A. In my office, 108 Fulton Street.

Q. Who were there?

A. Mr. Haas and I think his brother-in-law, Tyrola.

Q. Mr. Haas and whom?

A. A fellow named Tyrola, Mr. Haas's brother-in-law.

Q. How did it come to be torn up?

A. Why the day before Mr. Holmes and Mr. Peckham were at the office, and I then gave Haas, as I have already testified, $25,000, which he paid Holmes, and gave him a check for $2,525, which was one-quarter of the cost of the membership; and Mr. Haas asked Mr. Holmes then for this document, and Mr. Holmes said it was uptown, and he would have to get it. So I did not settle with Haas the balance, then, until the next day. Haas says: "I will get that trust agreement and bring it down." So the next day he and Tyrola came in the office and brought this with them, with his own personal agreement, and I gave them the check for thirty-eight thousand and some odd dollars which I have explained here. He then handed this paper to me, and I tore it up and threw it in the waste basket.

Q. How did it get out of the waste basket into our presence here.

A. After he had gone away I called one of the clerks of my office and told him to take it up and have it pasted together and put in the safe, which he did.

Q. What did you do that for?

A. Because I didn't like the way Haas had acted and I was a little suspicious that he might try to do something that was not right with me.

Q. In what way? What had Haas done that you were dissatisfied with up to that time?

A. Well, he has complained because I did not trade heavier on the December report.

Q. Because you did not what?

154 A. Because I did not trade heavier; I was not making money enough for him; and he got mad the night we talked about this, the night we went up to meet him and Holmes in the Breslin Hotel, and the time they said they wanted to draw their money out. I told him if he took his share of the $75,000 they had better close up their interest in the business, too.

Q. Mr. Holmes was not present when the paper was torn up?

A. No, sir.

Q. Do you know whether he was in town, in New York, that day?
A. I do not.
Q. When was it that Mr. Haas went away and said he would get the paper?
A. December 30th.
Q. And when did he bring it?
A. December 31st.
Q. At what hour on December 30th did he say he would get it?
A. I could not swear to the hour, but I am pretty sure it was in the forenoon.
Q. What time the next day did he have it?
A. He brought it in around three or four o'clock.
Q. What was the day of the destruction of the paper?
A. December 31st.
Q. Did you not testify that you paid money to Mr. Holmes, when he was there, on the 30th and 31st, both.
A. No, sir.
Q. You did not?
A. I did not intend to.
Q. You came over here, you said, I think, on the 9th of August to get those figures about the wheat report of the next day?
A. Yes sir.
Q. What time did you get here that day?
A. Somewheres around four o'clock.
Q. And what time did you leave to return to New York?
A. I am not positive what train I took home.
Q. You went back that night?
A. Yes, sir.
Q. And you did not register at any hotel then?
A. No, sir.
Q. Do you remember anybody that you saw here on that trip except Mr. Holmes?
A. No, sir.
Q. You have no means you can give us by which we can ascertain that you were here that afternoon?
A. No, I have no——
Q. Were you living at home or stopping at a hotel in New York at that time?
A. I was living at home.
Q. Where did you live, by the way?
A. I lived on Riverside Drive.
155 Q. You got back to New York, then, on the morning of August 10th?
A. Yes, sir.
Q. Where did you go when you got back to New York first?
A. I don't recall; I probably went to my office.
Q. Where is your office?
A. 108 Fulton.
Q. What is the number?
A. 108 Fulton Street.
Q. Fulton?

A. Fulton Street.

Q. That is pretty well down on the Island. How many squares is that from Wall Street?

A. Oh, four or five, I guess.

Q. Four or five blocks. What time did you get to your office?

A. Well, now, I am not positive that I went there; but I assume I did. I usually got there around nine o'clock.

Q. I would like to know about your movements the next day, if you have any recollection of them.

A. I am not sure what I did in the morning. I know I was up to Gates' office at the Waldorf.

Q. What time did you get there?

A. Oh, I was there most all day.

Q. Then you did not go to your office?

A. I wouldn't say positively whether I did or not, but I think I did.

Q. You say you think you were there most all day?

A. Yes, sir.

Q. What do you mean by that? What time did you go there?

A. Well, the day does not commence, really, in a broker's office until ten o'clock.

Q. Were you there at ten o'clock?

A. I could not swear positively.

Q. What is your best recollection as to when you got there?

A. I don't know.

Q. Have you any recollection about it?

A. No; not as to the exact time I got to the office.

Q. Can you approximate it at all? Was it before luncheon or after?

A. Oh, I was there in the forenoon. I know I was there in the forenoon, and I was there in the afternoon.

Q. Did you stay there until the afternoon, or did you go away and come back?

A. I think I stayed there.

Q. What were you staying there for?

A. Watching the market.

Q. And what time of the day was it that you made this memorandum for Mr. Rogers?

A. It was somewhere around three o'clock in the afternoon.

Q. You have told us about the figures you put down. You sealed them up in an envelope?

A. Yes, sir.

Q. You did not let Mr. Rogers see what they were, or anybody else?

156 A. No, sir.

Q. And then what did you do with the envelope?

A. I don't know what he did with it, but I asked him to put it in the safe.

Q. What did you tell him to put it in the safe for?

A. I did not make any explanations.

Q. I do not ask you whether you made any explanations, but I am asking you to give us one.

Q. I asked him to keep it for me.

Q. The cotton crop report would be out in a little while, would it not, that day?

Mr. BAKER: No; this was the wheat report.

Mr. WORTHINGTON: Wheat, I mean.

A. It was due at four o'clock.

By Mr. WORTHINGTON:

Q. And you gave it to him about three o'clock and told him to put it in his safe?

A. Yes, sir.

Q. And keep it there until four o'clock?

A. No; I told him to keep it; I didn't tell him what for, then.

Q. Well, your object was so that when the crop report came out that day it could be verified, and you could show him that you knew what you were talking about?

A. Yes, sir.

Q. And you knew that would be there about four o'clock or a few minutes after?

A. Yes, sir.

Q. And you told him at three o'clock to put it in his safe?

A. Yes, sir.

Q. You are quite sure you told him to put it in the safe?

A. Yes, sir.

Q. How do you come to remember that, Mr. Van Riper?

A. I remember writing the note and asking him to put the time of day on it and the date and to keep it for me.

Q. What was your object in letting a man who seems to have had nothing to do with this arrangement know that you were in a position to get information about the crop report in advance of its publication?

A. Well, at that time I don't know that I had any particular object, except that I might have wanted to show him in order to help my credit with the firm, and for the purpose of having him know that I knew what I was doing.

Q. Well, Mr. Rogers was not advised how you were getting the information?

A. Not at that time.

Q. Did you ask him to pledge himself to secrecy?

157 A. Yes, sir; I did later when I showed him. I did not at this time because he did not know what was in the envelope.

Q. When you opened it and showed it to him you pledged him not to let anybody know?

A. I did, yes, sir.

Q. And was that all he had to do with this business?

A. Yes, sir.

Q. And you did that and ran the risk of his making it known?

A. I knew Mr. Rogers very well and I had absolute confidence in him.

Q. When was it that the paper was taken out, the envelope opened?

A. It was after the newspaper reports of the report were published.

Q. The same afternoon?

A. No, I think it was the next day.

Q. Did you not tell us that you stayed there until the report came out?

A. Yes, sir.

Q. And when the report came out you did not then call his attention to it?

A. I don't think I did that day.

Q. Why did you wait?

A. Well, I don't know.

Q. How long did you wait?

A. In fact, when I gave it to him I didn't know whether I ever would show him what was in it. I merely wanted him to hold it for me.

Q. How long did you wait before you did open the envelope and get it out and show it to him?

A. Well, I don't remember; but I know that after the reports were published and they showed the exact figures and they showed this comment on spring wheat damage, I took one of those newspaper reports and had him open the envelope and compare the reading of the note with the published report.

Mr. WORTHINGTON: Let me see those checks of Mr. Van Riper's, please.

Mr. ADKINS: Which ones?

Mr. WORTHINGTON: His checks.

(The papers referred to were handed to Mr. Worthington).

Mr. WORTHINGTON: Gentlemen, I would like very much to have that affidavit or that copy of it before this session is over.

Mr. BEACH: I am afraid we cannot accommodate you, sir, until the morning.

158 Mr. WORTHINGTON: In the morning? I say, I would like very much to have it at this session.

Mr. BEACH: Well, we will not promise you to do so at this session when we cannot.

Mr. WORTHINGTON: May it please your Honor, I would like to suspend the examination of the witness in order that I may put on somebody from the District Attorney's office and find out where that affidavit is, and get it. I wish to use it in cross-examination of this witness today.

The COURT: I do not think the situation is such that the Court should make any order about it now. Is there nothing else that you want to ask this witness?

Mr. WORTHINGTON: Oh, yes; there are quite a number of things, your Honor; but I wish to ask him about that affidavit today, before he has had an opportunity to go over night.

Mr. BEACH: I think that is very uncalled for.

The COURT: I do not know that I can make any order about it. You did not give notice to the counsel for the Government until you came in this afternoon. If you had given it before——

Mr. BEACH: Under that assertion Mr. Worthington can resort to the best means he has of getting that affidavit. I had intended to

accommodate him at the next session of the Court; but in view of that assertion he must get that affidavit the best way he can.

The COURT: We will not have any personal comments about it. The matter addresses itself to me simply as a matter of legal duty on my part; and unless some reason is given me which does not occur to me now, I do not see how I can order anything about it.

Mr. WORTHINGTON: I have not any reason, your Honor, except that the attention of this witness has been called to that affidavit, which may be important, and might be a decisive feature of this case; and I submit that we ought to be able, if possible, to examine the witness about it now, before he has had any time to consider further about the matter.

The COURT: I will hold that I have no authority to compel its production at this time

159 Mr. WORTHINGTON: I am not asking your Honor to compel its production. I am asking you to allow the witness to stand aside to allow me to call another witness

The COURT: Oh, that may be done.

Mr. WORTHINGTON: That is all I ask. Just step aside, Mr. Van Riper. Mr. Beach, I will call you to the stand.

(The examination of the witness Van Riper was thereupon temporarily suspended.)

LEWIS C. VAN RIPER, the witness whose examination was suspended as heretofore stated, thereupon resumed the witness-stand, and his cross examination was continued, as follows:

By Mr. WORTHINGTON:

Q. Do you usually carry your check book around with you when you travel, Mr. Van Riper?

A. Yes, sir.

Q. Do you keep your check-books?

A. No sir.

Q. You do not keep any of them? I mean, the stubs?

A. I do not keep them very long.

Q. Are you not in the habit of putting on your stubs a memorandum when you draw a check?

A. Not always.

Q. I am asking you for your habit?

A. No, I am not. I do not usually post them up.

Q. You do not usually what?

A. I do not usually post up the stubs.

Q. I do not know what you mean by that; but when you write a check you are not in the habit of writing in the stub what it is?

A. No, sir.

Q. Do you keep any account to show how your money has gone?

A. I keep it in my own mind, generally — my personal account.

Q. You just keep it in your own mind?

A. Yes, sir.

Q. And you do not have your stubs back even as far as 1904?

A. No, sir.

Q. You cannot produce any check-book, then, from which this Exhibit 24 is torn?

A. No, sir.

Q. Have you exhibited this paper to anybody since you say it was made—this Exhibit 24? It is a memorandum, I understand, that you say you made here on the night of August 9th, 1904.

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A. I have shown it to Mr. Beach and Mr. Adkins.

Q. Well, you have shown it to Mr. Beach and Mr. Adkins; but I ask you whether you have shown it to anybody before you showed it to the representatives of the Government?

A. I do not think I did.

Q. When did you first show it to anyone?

A. I think I showed it to Mr. Braintree first.

Q. Mr. Braintree?

A. My attorney; yes, sir.

Q. When was that?

A. I think it was in July, 1905—somewheres along there.

Q. That was about a year after the transaction which you say it represents?

A. Yes, sir.

Q. You say, I understand, that it was made in July, 1904?

A. Yes sir.

Mr. ADKINS: August, he said.

Mr. WORTHINGTON: I beg your pardon—August, 1904; August 9th?

The WITNESS: Yes, sir.

By Mr. WORTHINGTON:

Q. And that no other person ever saw it until July, 1905, as far as you can tell us?

A. I do not recall having shown it to anybody.

Q. After you showed it to Mr. Braintree—is that his name?

A. Yes, sir.

Q. In July of 1905 to whom did you next exhibit it?

A. I think Mr. Braintree sent it to Mr. Beach.

Q. In the summer of 1908?

A. Somewhere along there.

Q. What part of the check book was this torn from?

A. The fly-leaf.

Q. Did you say it was the fly-leaf?

A. The back-leaf; the back fly-leaf.

The COURT: If counsel will step to the bench now, I will state privately what I think about this matter. (Referring to subpoena duces tecum handed to the Court by Mr. Lester.)

(After a conference between the Court and counsel out of the hearing of the jury, the following occurred):

The COURT: We have reached the usual time for adjournment. It is well understood, I think, by all lawyers, that when a witness is on the stand, even after a session of court, if an adjournment of the court is taken, he is not to be talked with

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about his testimony; and nobody has any right to assume that anybody will talk with this witness. There is no reason to suppose that anybody will; and the witness will understand that he is not to have any talk with anybody about the subject matter of his testimony; and if he should, it might be treated as contempt of court. I simply speak of this, which is understood by everybody who understands the business of a court.

With that understanding we will take the usual recess until to-morrow morning at ten o'clock.

162 THE UNITED STATES
vs.
EDWIN S. HOLMES, JR.

Testimony of Lewis V. Van Riper Copied from Book 10 of Stenographer's Minutes, Pages 1083 to 1167.

163 *Testimony of L. C. Van Riper.*

(Book 10, Page 1083.)

WASHINGTON, D. C., *Wednesday, June* 19, 1907—
10 o'clock a. m.

The Court *not* pursuant to adjournment.

Present on behalf of the United States, Hon. Morgan H. Beach, Special Assistant to the Attorney General.

Hon. D. W. Baker, U. S. District Attorney; and Jesse C. Adkins, Esq., Assistant U. S. District Attorney.

Present on behalf of the defendant, A. S. Worthington, Esq., and Wharton B. Lester, Esq.

Mr. BAKER: Yesterday a call was made for the affidavit of the witness. We have made search and cannot find the original affidavit; but we have several copies of it, and I am prepared to submit to counsel on the other side a copy.

Mr. WORTHINGTON: I am much obliged to you, Mr. Baker. I may say that I see it has been said that I said yesterday I was afraid the District Attorney would go over this paper with him. I did not say anything of the kind. I simply said I did not want him to be thinking of it over night.

The COURT: I did not understand you to say anything of the kind.

Whereupon—

L. C. VAN RIPER, resumed the stand for further cross-examination.

By Mr. WORTHINGTON:

Q. Mr. Van Riper, you have heard what the District Attorney has said, that this is supposed to be a copy of an affidavit. I wish you would read it over. I want to ask you, in the first place, whether or not that is your recollection of the paper? Is that your recollection of the affidavit you gave?

164 A. I assume it is.

Q. I do not ask you what you assume. I ask you if that is your recollection of the paper?

A. Yes sir; it refreshed my memory on a couple of points I had forgotten about.

Q. I was going to say that I could refresh your memory. I will read this paper so that the jury may know what it is, and will ask questions about it as I go along.

"STATE OF NEW YORK,
County of New York, ss:

"Lewis C. Van Riper, being duly sworn says that he is acquainted with Edward S. Holmes, Jr., of Washington, D. C., who was introduced to him in or about the month of August, 1904, and that said Holmes at present holds the position of Assistant Statistician of the Bureau of Statistics of the Department of Agriculture, at Washington, D. C.

"That said Holmes, has at various times, furnished advance information to various persons with the intention that such information should be used by said persons in market operations. Said information related to the statistics and data compiled by the said Bureau, under the supervision of said Holmes, and was issued prior to the time when the same was or should have been regularly issued to the public; and

"Furthermore, said Holmes has, at various times, used his influence, and has undertaken to procure, and deponent believes has in fact, procured the statistics and data as originally compiled, to be changed and altered, so that the result would appear more favorable to the interests of the persons for whom the said information was procured and to whom it was furnished, as aforesaid, as the particular occasion might require, and as the said persons to whom it was furnished had desired and requested from him, said changes being contrary to the facts, and as above stated, the altered statements being furnished to suit the whim and convenience of the persons to whom the same was furnished, who deponent, believes used the same for the purposes of speculation only."

I want to ask you about that last paragraph, where you say that at various times the statements were altered to suit the whim and convenience of the persons to whom it was furnished and in whose interest he was working. I want to know what your authority is for making that statement?

A. Mr. Holmes and Mr. Haas.

Q. What did Mr. Holmes say to you on that subject?

A. I testified to that yesterday. They told me about fixing the figures for Price in December, 1903, and Haas also told me about his trip to Washington, on the night of May 31st, 1905, for Mr. Price.

165 Q. Those are the two pieces of information on which your statement was based?

A. Yes sir.

Q. Then you did understand that as to the December, 1903, state-

ment that he had doctored it and changed it so as to suit Mr. Price's directions?

A. Yes sir.

Q. You understood from Mr. Haas, that as to the June statement he had fixed and altered it, and brought the number of bales down until it suited Mr. Price.

A. The bales were not quoted. It was acreage and percentage.

Q. It was in December only that you gave the bales?

A. Yes sir.

Q. But he changed them until Price was satisfied?

A. Yes sir; he had reduced the percentage of acreage production, and had also raised the condition of the crop.

Q. For the purpose of lowering the price of cotton?

A. Yes sir; in the latter instance for the purpose of lowering the price of cotton, and in the first instance for the purpose of advancing the price.

Q. You have no personal knowledge about this June, 1905, matter except what you say Mr. Haas told you?

A. That's all.

Q. I believe you do say that Mr. Holmes told you, in March, that he was going to manipulate things so as to make it as bearish as possible.

A. He didn't say he was going to manipulate things. He said he was going to visit the agencies.

Q. Did he say anything to indicate that he was going to use any influence with them?

A. He was going to use what influence he could to make a bearish report.

Q. Did he give you the idea that he was going to get the agents to make reports that were not true?

A. He was going to try to use his influence so they were not misled to make a report unduly bullish.

Q. You had no scruples about going into this June, 1905, arrangement, with the expectation of making money out of it?

A. Not until the last trip of Haas to Washington. I did oppose that.

Q. On what ground?

A. On the ground that they were going too far.

Q. What do you mean?

A. I mean that they had no right to come down and change the figures, after they had been sent in. I begged Haas not to come down, and he promised me that he wouldn't. He said that he would go down, but he didn't think he would go near the Colonel.

166 Q. Did you make your protest on the ground that it was immoral or unlawful?

A. Yes sir; both on those grounds and the further ground that it was dangerous.

Q. That it was dangerous?

A. Yes sir.

Q. And might get you all into trouble?

A. It might get them into trouble.

Q. You did not have any fears for yourself?

A. No sir; because I had nothing to do with that part of it.

Q. I will go on:

"That the sources of deponent's knowledge, and the grounds of his belief are as follows:

"That upon first becoming acquainted with Mr. Holmes as aforesaid, said Holmes volunteered, without any solicitation on deponent's part, to furnish deponent with advance information from the Bureau of which he was in charge, said information to consist of the figures that would be announced by the Bureau at various times in the future, and that in order to demonstrate to deponent his ability to do this, he did, at various times, furnish said deponent with exact figures on cotton and wheat in advance of their publication by said Bureau, and in advance of the time when the public at large, under the rules of the Department, was rightfully entitled to be acquainted with the information, and in corroboration of the foregoing statements, deponent has in his possession certain letters and data, written by said Holmes, in his own handwriting, to deponent, which deponent offers to produce if requested and necessary."

I call your attention to the fact that you say there that in order to demonstrate his ability to do this Holmes, at various times, furnished you with exact figures on cotton and wheat in advance of the publication by the bureau. You have told us that he did that on the 9th of August, 1904?

A. Yes sir.

Q. At what other time did he do it?

A. He furnished it on several other times.

Q. For the purpose simply of demonstrating his ability to give it?

A. For the purpose of demonstrating it, and for the purpose of speculating.

Q. That was the only occasion on which he did it, simply for the purpose of a demonstration?

A. Well, it was entirely at my option whether I wished to use it or not.

Q. I am calling your attention to the fact that you say, in this affidavit: "In order to demonstrate to deponent his ability
167 to do this he did, at various times, furnish said deponent with exact figures on cotton and wheat in advance of their publication."

A. He did.

Q. Did he do it at various times just for the purpose of letting you know that he could do it?

A. Yes sir.

Q. At what other time than on August 9th did he do it for that purpose only?

A. He furnished it on the 9th of August. He furnished it on the day before the cotton report in September.

He furnished the wheat report in September, the cotton report in October, the wheat report in October, the wheat report in November, the cotton report in December. I am not sure whether there was a wheat report in December or not.

Q. And on all those occasions, after the 9th of August, he furnished it simply in pursuance of the arrangement you had made about speculating and dividing the profits?

A. I never made any arrangement with Mr. Holmes.

Q. I didn't say you did. I say they were made in pursuance of an arrangement you had for speculating and dividing the profits?

A. The arrangements I had made with Mr. Peckham were entirely at my option, whether I would trade on it or not. I would trade on such as I wanted to, and when I wanted to trade with him I reported to him, and when I didn't I didn't report to him.

Q. Your arrangement, then, whatever it was, was with Mr. Peckham alone, and Mr. Holmes was not a party to it?

A. No sir, he was not.

Q. Mr. Holmes was not a party to any agreement with you?

A. He was not a party at all.

Q. Did he make any arrangements with Mr. Haas, in your presence, for dividing the profits?

A. I made an arrangement with Mr. Haas in Mr. Holmes' presence.

Q. I am asking you whether Mr. Holmes made any arrangement with Mr. Haas in your presence, for dividing or receiving profits?

A. No sir.

Mr. BAKER: I object to the question in the form it is put, because there might have been an arrangement made in law and not in words.

The COURT: The question has been asked and answered. There is nothing pending for me to pass upon. You can go on.

By Mr. WORTHINGTON:

Q. Was any arrangement made, in your presence, between Mr. Holmes and Mr. Peckham that Mr. Holmes was to receive any part of the profits?

Mr. BAKER: I object to that question because it calls for a conclusion of law.

The COURT: It will not be treated as a conclusion of law. I believe he means to ask whether there was anything said about it.

A. No sir.

168 By Mr. WORTHINGTON:

Q. So far as your personal knowledge goes, Mr. Holmes never had any arrangement with anybody to receive any part of the profits from these speculations?

A. No sir.

Q. I will go on:

"The above information was furnished to deponent without any solicitation on the part of deponent, as aforesaid, and without any promise on the part of the deponent of remuneration to said Holmes in any way, shape or manner."

A. That is true.

Q. "That on or about March 10th, 1905, said Holmes visited de-

ponent's office and there disclosed to deponent certain plans which were formulated by himself and others, whose names deponent does not desire at this time to make public, to influence the June report so as to make the same appear as bearish as possible."

Who were the persons whose names you did not wish to disclose at that time?

A. Mr. Price, Mr. Haas and Mr. Hyde.

Q. Why did you want to conceal their names?

A. I did not desire any more notoriety than was absolutely necessary, in connection with the affair.

Q. I go on:

"That said Holmes introduced deponent to a friend of his, who is an ex-employee of the Statistical Bureau and whose name deponent is not desirous of disclosing at this time (hereinafter referred to as the ex-employee) who told deponent that said ex-employee would keep deponent posted as to all plans and devolopments."

I suppose the ex-employee is Mr. Haas?

A. Yes sir.

Q. "Said ex-employee, on or about May 1st, 1905, told deponent that said Holmes was about making a trip, visiting various state agents of the cotton growing states, with a view to influencing their reports."

That is something you have not told us about here. I have understood you to say that Mr. Holmes told you that in March.

A. Mr. Holmes told me in March he was going to do that. He didn't say it right at that time.

Q. Let me read you again what you say in this affidavit about that:

"That on or about March 10th, 1905, said Holmes visited deponent's office, and there disclosed to deponent certain plans which were formulated by himself and others, whose names deponent does not desire at this time to make public, to influence the June report so as to make the same appear as bearish as possible."

You do not say anything there about Holmes having told
169 you he was going to go down there and see the agents?

A. No.

Q. How did you come to omit that in the affidavit?

A. I don't know.

Q. You have told us here that Holmes told you in March, that he was going down to see the agents, but you did not say anything about Haas telling you about it. You say in this affidavit that said ex-employee, on or about May 1st, 1905, told deponent that said Holmes was about to make a trip, &c.

A. They both told me.

Q. In the affidavit you inadvertently omitted to say that Holmes told you?

A. There are lots of things I didn't say in the affidavit that were true.

Q. But you inadvertently omitted to tell us on your direct examination that Haas had told you that about the first of May?

A. Yes sir; and that refreshes my memory. I had forgotten about that.

Q. "And as a result of the efforts of said Holmes, the percentage of condition, 77.2 which was given, was higher than actual conditions existed warranted, and that the acreage given, 14.4, was lower than actually warranted by the reports which he received in due course from the Government agents in the said cotton growing states which in themselves, in various instances, had previously been influenced in the same direction through the various correspondents?"

What did you mean by that?

A. I meant that was my belief.

Q. "Which in themselves, in various instances, had previously been influenced in the same direction through the various correspondents?"

A. That was my belief at the time I made that affidavit.

Q. That Mr. Holmes had influenced them to send in reports and make them the way he wanted them?

A. Yes sir.

Q. That is something you have not yet told us.

A. I was not asked for an opinion.

Q. Had you any information from Mr. Holmes on that subject?

A. Only what he told me about his contemplated trip, in March, and what Haas afterwards told me.

Q. I understand you to say here that in various instances he had previously been influenced in the same direction?

A. Previous to the June report.

Q. What were the various instances previous to the June report, where you understood that Holmes had influenced the correspondents to send in false reports?

A. I didn't say false reports. I said he had influenced them to make reports favorable to his wishes.

Q. Do you mean that he had influenced them to send in true reports?

A. I don't know. It is pretty hard to draw the lines there.

170 Q. I would like to know where you would draw the line?

A. Well, may I give you an illustration of what I mean?

Q. Why sure.

A. For instance, if you are defending a client, and you believe yourself he is guilty, it is your duty to influence the jury to acquit him if you can; is it not?

Q. I am not on the witness stand at present, and you are.

A. Well, he was using his argument and his persuasive qualities to show these men that the acreage had not been reduced as much as the public expected.

Q. Did Mr. Holmes tell you that is what he had done on any occasion?

A. No sir; he told me that was what he was about to do.

Q. He had only told you, in March, that he was going to do it.

A. Yes sir.

Q. And he had never told you that he had previously done it?

A. No sir, not in this way.

Mr. BAKER: The word "previously" there refers to the reports of agents prior to the January report, in that month, and not to other reports, as Mr. Worthington is trying to interpret it.

Mr. WORTHINGTON: I do not want to misinterpret it, and I will read it again:

"And that as a result of the efforts of said Holmes, the percentage of condition, 77.2, which was given, was higher than actual conditions existed warranted, and that the acreage given, 11.4, was lower than actually warranted by the reports which he received in due course from the Government agents in the said cotton growing states, which in themselves, in various instances, had previously been influenced in the same direction through the various correspondents."

I think Mr. Baker's criticism about that is correct and that it probably means what he suggests it does.

By Mr. WORTHINGTON:

Q. I go on:

"On Wednesday night, May 31st, at his request, deponent met the said ex-employee at the Waldorf-Astoria Hotel, and he then informed deponent that he was about to have a conference with certain New York cotton speculators. He also informed deponent at that time that the figures to be issued on June 3rd would show average condition 75 per cent and reduction in acreage from 12½ to 13 per cent, and that these figures were the most bearish that could be secured under the circumstances."

"Later in the same evening, deponent was asked over the telephone, by said ex-employee, to again meet him, which deponent did, and he thereupon informed deponent that the said speculators, after a conference, had not considered the figures which the said ex-employee had secured from said Holmes, and which he furthermore stated said Holmes had reported to him would be the Department figures, bearish enough for their purposes, and that he, the said ex-employee, was going to Washington on the 12:15 train on the Baltimore & Ohio Railroad that evening to meet said Holmes and to arrange, if possible, to manipulate statistical figures and data in order to show a result which they might be able to formulate as being more favorable to their purposes."

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You do not say anything here about your protesting against that, I notice?

A. No.

Q. "That on the morning of June 2nd, about 8:30 A. M. about three hours before the said report was due to be announced in Washington, the said ex-employee called deponent up on the telephone and told him that the figures to be announced would show condition about 77 per cent, and percentage reduction about 11½ per cent, and also that at his request it would be announced that the acreage announced only included acreage actually planted up to May 25th, so that said report would have a more bearish effect."

A. Mr. Worthington, may I say something there?

Q. Certainly.

A. That refreshes my memory about another matter I did not speak about on my direct examination.

By Mr. BEACH:

Q. What was it?

Mr. WORTHINGTON: I will ask him about it.

A. Mr. Haas told me over the phone that it was arranged that Mr. Price would wire Mr. Hyde, after that report was issued, and would ask him if the acreage percentage reported included acreage planted after May 25th, and that the crop being so very late and a great deal of cotton was still being planted, and that Mr. Hyde's answer by wire would be that this report only included acreage planted to May 25th; that that would be announced to the press and the cotton trade, and it would break the market still further.

Q. Who told you that?

A. Mr. Haas, over the phone that morning.

Q. You understood then, from Mr. Haas, that Mr. Hyde was in the scheme?

A. That Mr. Hoomes was arranging this matter.

Q. He said he had arranged that Mr. Hyde would send that answer?

A. Yes sir; and it was done after the report came out.

Q. You have no personal knowledge of that, I suppose?

A. I do. I saw Price's telegram published, and the statement made in the press afterwards.

Q. You saw that?

A. I saw the publication of this correspondence and these telegrams.

172 Q. When were they published?

A. They were published either that afternoon or the day following.

Q. You mean either the day of the report or the day after?

A. I think the following morning it appeared in the New York Commercial or the Journal of Commerce.

Q. We will find that either on the third or fourth of June?

A. Yes sir; or on the day of this report.

Q. It was given out to the public and the press before there had been any of these disclosures by you?

A. Yes sir.

Q. "That if departmental figures, statistics and data are to be manipulated at the will of speculators, and subject to the whim of departmental clerks and employees the legitimate trading is, in effect, paralyzed and the business underlying said trade is in a continually demoralized condition, and the ultimate effect on the holders of cotton and grain is too well known to be commented upon.

The effect would be disastrous to everyone, to the producer, the consumer, and the legitimate trader, and would only be beneficial to the speculator or gambler." I notice that in the closing paragraph or peroration, if I may term it so, you say that if the department's figures, statistics and data are to be manipulated at the will of

speculators, and subject to the whim of department clerks and employees"——

Why did you lay so much stress upon that in your affidavit when as a matter of fact, the principal arrangement was that you were to get the correct information and not have the returns manipulated?

A. My understanding at that time was that Mr. Holmes would be able to give any figures he saw fit to suit Price, while Mr. Hyde was in Europe.

Q. Was Mr. Hyde in Europe at that time?

A. No sir; but they had told me that he was going to Europe right after the June 3rd report.

Mr. LESTER: What is the date of that affidavit?

Mr. BAKER: It is dated June 6, 1905.

By Mr. WORTHINGTON:

Q. Now, I want to have you take up each of the months when you say this agreement about making profits and dividing with Haas and Peckham was in force. I want to know to what extent, if at all, the operations which you entered into were affected by the disclosures or alleged disclosures made by Mr. Holmes as to what the reports would be. You say the arrangement was made in August 1904?

A. Yes sir.

Q. There are four months then we would have to consider, so far as cotton is concerned, that is, September, October and December 1904, and June 1905. Is that right?

A. That is correct?

Q. You were asked by the District Attorney about the September operations, and I understood you to say that you made a profit of $2100. Is that right?

A. $2115, I think.

173 Q. I do not recall that anything was produced here to show how it was made. I would like to know whether you bought or sold?

A. I sold.

Q. Through what brokers did you deal?

A. G. Gates & Company.

Q. The whole transaction in the September deal was through that concern?

A. Yes sir.

Mr. WORTHINGTON: Have you got the books here?

Mr. BAKER: We have got the statements here.

Mr. WORTHINGTON: The statements of Gates & Company?

Mr. BAKER: Yes sir.

By Mr. WORTHINGTON:

Q. I show you these papers (Exhibit 215), which the District Attorney has handed to me and ask you to tell me from them what you can as to the details of your operations in cotton, with reference to the September statement by the department made on September 2nd. I want you to tell us the amounts and how that $2100 was made?

A. On August 31st, I sold 300 bales at $1080; on September 1st, 400 bales at $1089;—10 at 1076—10 at 1077; On September 2nd, 200 at 1056. This date is not carried forward. Then it says "Bought 600 at 1040—500 at 1033. Of course that is September 2nd. It is either the second or third; but that report was on September 2nd, on account of Labor Day and Sunday.

Q. The report was on the 2nd. You began that operation on the 31st of August?

A. Yes, sir.

Q. You began by buying or selling?

A. By selling.

Q. That was on the expectation that the report would be bearish or bullish?

A. Bearish.

Q. So that the price would go down, and you could buy back, as you express it, at a profit?

A. Yes, sir.

Q. What information had you on the 31st of August, which led you to start these operations?

A. I think I had a letter from Mr. Holmes of August 30th, telling me that if I had any of that stuff to sell it and I sold some on the next day.

Q. You were proceeding then, with reference to this September deal, on information which you say he gave you on the 30th of August?

A. Yes, sir.

Q. You have not told us just how this $2100 profit was made?

A. It is the difference between the sale and the purchase with the commission deducted, of $2115.

Q. Then statement shows a balance of $2115?

A. Yes sir.

Q. That was the profit on the transaction?

A. Yes, sir.

171 Q. You would infer from this statement, that you bought on the second of September, although there is no date on the paper?

A. Yes sir: I bought after the report was issued.

Q. I would like to take up the month of October. I want to find out when it was that you began the operation, in cotton with reference to the October 3rd report, which resulted, I think you told us, in a loss?

A. Yes, sir.

Q. I want to know what there is which will show when you began that operation?

A. I think Mr. Beach has the statement of the brokers.

Q. With whom did you deal with reference to the October speculation in cotton?

A. We dealt with Hubbard Brothers. I am not sure but what we dealt with Gates.

Q. You cannot be positive whether the whole transaction was with Hubbard Brothers or not?

A. No sir; not at this time.

Q. Are the statements all here?

A. I think so.

Q. Do you recall about how much you made or lost on the October transaction in cotton?

A. I don't recall exactly.

Q. I don't ask you to recall it exactly. I did not know but that an event of that kind might have impressed itself upon your mind so that you could tell us about it. It was quite a loss; was it quite a loss?

A. About $18,000 or $20,000.

Q. About $20,000?

A. Some where near that.

Q. Was that because the figures did not turn out as you were told they would, or because the market did not respond to them?

A. No sir; it was because we were misled as to Mr. Price's operations; or at least we thought that was it. We were a couple of days behind.

Q. Do you mean that Mr. Price's operations were so large that they would balance the market as against the Government's report?

A. They would sometimes.

Q. They would sometimes?

A. Yes, sir.

Q. You thought you were getting inside information?

A. Unless the report was an entire surprise or something like that, a large operator like Price could sometimes turn the market.

Q. You thought you were getting inside information about what Price was going to do, and it turned out you had it wrong?

A. We were getting it, but it came through Haas to Holmes and from Holmes to Peckham, and we were about two days behind the real movement, and that's why Haas came to be brought into
175 the deal later.

Q. You thought it was necessary to have Haas in it, so that you would know what Price was going to do?

A. So that we would know right away.

Q. With that explanation, I now hand you these papers, which seem to be statements of account with Hubbard Brothers. I notice one of these is dated May 31st, 1907.

Mr. ADKINS: That is a recent transcript from the books. The books are here. I take it they both bear that date.

By Mr. WORTHINGTON:

Q. The books are here, and they are a transcript from the books. I would like you to look at this paper and tell us when you began operations on that October cotton deal?

A. September 26th.

Q. That report was issued on the 3rd of October at 12 o'clock noon, and you began on the 26th day of September?

A. Yes sir.

Q. To use the lingo of the street, did you buy or sell on the 26th of September?

A. We bought.

Q. Go on with your transactions down to the third?

A. We bought a thousand bales.

Q. You speak of bales. I think a bale averages in the neighborhood of 500 pounds or more?

A. Yes sir.

Q. Now go on.

A. September 26, bought—10 December—1065.

Q. That means December delivery, I believe?

A. Yes, sir.

Q. What is the next purchase?

A. September 27th—2 December—1046; September 27th—8 December—1045; September 26—10 December—1065; September 30th, 10 December—1023; October 5th, 5 December—1019.

Q. When did you sell?

A. This October 5th purchase was after the sales were made. On September 29th, we began to sell. We sold 10 December at 1050—4 December at 1028—6 December 1029 on September 29th. October 1st we sold 5 December at 1012; 5 December at 1010; 5 December at 1012; 5 December at 1013. On October 3rd, we sold 5 December at 1002; 1 December at 999; 1 December at 998; 3 December at 999; 2 December at 998; 5 December at 998; on October 4th we sold 3 December at 980, and 2 December at 979.

Q. I observe that some of these sales were on the day the report appeared.

A. Yes sir.

Q. Is there anything in the papers in the way this business is managed, by which the papers will show the hour at which the transactions occurred?

A. I could not say as to that.

Q. You began to buy on the 26th of September.

A. The record of quotations for that day might show, on the cotton exchange.

Q. I say you bought on the 26th, 27th and 30th of September?

176 A. Yes sir.

Q. On what information from Mr. Holmes, or purporting to come from Mr. Holmes, did you begin to buy on the 26th of September, 8 days before the report was to come out?

A. On information received from Mr. Peckham, that Mr. Price was buying.

Q. Mr. Holmes had nothing to do with that then?

A. Yes sir: Mr. Peckham was down here in conference with Mr. Holmes at the time. That was the advice that came from Holmes.

Q. You understood on Mr. Holmes' information through Mr. Peckham, as early as the 26th of September, that there would probably be a bearish report on the 3rd of October. Is that right?

A. Yes sir.

Q. This other paper (Exhibit 214) shows cash transactions. On the 26th of September, you appear to have put up $1,000?

A. Yes sir.

Q. That was for margins?

A. I don't know about that. It was just on account.

Q. Will you tell us what was the ordinary margin required at that time on cotton transactions, when you wanted to deal?

A. It is according to the standing of the customer, to a certain extent. Sometimes you don't have to put up any margin.

Q. If it be not too delicate a question, what was generally required of you?

A. In some instances I didn't put up any margin. I merely paid the difference from day to day. If the market went down I made a deposit to cover the loss, and if it went up they paid me.

Q. You had no rule or rhyme about it at all?

A. Not in some instances. In other instances they would say: "Give us a check for so much." I would give them a check. There was never any particular amount figured.

"The above mentioned paper, being exhibit No. 214, is in the words and figures following, to wit:

Account Current.

NEW YORK, *May* 31, 1907.

Mr. L. C. Van Riper in Account with Hubbard Bros. & Co., Coffee Exchange Building.

1904.			Dr.	Cr.
Sept. 26	cash			4000
27	"			3000
30	"			1500
Oct. 5	"			2000
1904.			Dr.	
Sept. 29	ac/s	6089	9000	
	"		1970	
Oct. 1	"	6161	675	
	"	6162	1860	
5	"	6283	3340	
6		cash	1755	
			10500	10500

E. & O. E.

177 Hubbard Bros. & Co., Coffee Exchange Building, New York.

Cable Address "Nodine," N. Y.

COFFEE EXCHANGE BUILDING,
NEW YORK, *May* 31, 1907.

To Mr. L. C. Van Riper.

DEAR SIR: Please find herewith our regular report of open trades for your account. If not correct, please oblige us by advising promptly by wire.

Purchases.					Sales.				
'04.				a/c sales.					a/c sales.
Sep. 26	Dec.	10	1065	6089	Sep. 29	10	Dec.	1050	6089
27	2	"	1046	6162		4	"	1028	6096
	8	"	1045	"		6	"	1029	"
26	10	"	1065	6096	Oct. 1	5	"	1012	6162
30	10	"	1023	6161		5	"	1010	"
Oct. 5	25	"	1019	6283		5	"	1012	6161
						5	"	1013	"
					Oct. 3	5	"	1002	6283
						1	"	999	"
						4	"	998	"
						3	"	999	"
						2	"	998	"
						5	"	998	"
					Oct. 4	3	"	980	"
						2	"	979	"

178 Q. I show you papers which the District Attorney hands me, which are undoubtedly statements of your account with Charles G. Gates and Company. I wish you to look at them, and, if you can, tell from them when you began to deal with Gates & Company, with respect to the October 3rd report?

A. It is pretty hard to do that from this statement, because they are all mixed up with other trades.

Q. Can you pick out from this statement those which relate to the deal on this October 3rd, 1904, cotton report?

A. I don't believe I can.

Q. Do you find any entry there of September 26th?

A. Yes; there is September 26th—cash item.

Q. Look at this paper. Here is an entry of September 26th—300 December cotton.

A. Yes sir;

Q. You were beginning to buy cotton then on the 26th of September, from Gates & Company?

A. Yes sir; the same day.

Q. The same day you began with the others?

A. Yes sir.

Q. So you had what you considered pretty reliable information nine days before the October cotton report was to come out as to what it would be, upon which you could operate?

A. That is that Mr. Peckham told me to begin buying.

Mr. BAKER: Did Mr. Peckham tell you in writing or orally?

A. Yes sir; I think the letters are in evidence.

By Mr. WORTHINGTON:

Q. Then the letters from Mr. Peckham, which are in evidence in this case are the information upon which you began to buy cotton on the 26th of September?

A. I think so; and he used to call me on the 'phone too.

Q. Have you any recollection that you got any information from

him in reference to what the October 3rd cotton report would be in 1904, except from the letters?

A. I don't understand that.

Q. Have you any recollection that you got any information from him, except what you got out of the letters?

A. Yes; I talked to him on the phone every day when he was down here.

(Said exhibit No. 216 is in the words and figures following, to-wit:

179 (Copy.)

NEW YORK, *May* 31, 1907.

M. Lewis C. Van Riper, in Account with Charles G. Gates & Co., DR.

1904.			
Aug.	12	To wheat	106.25
	20	Check	1893.75
Sep.	2	"	4615
	13	"	1537.50
	29	1000 Dec. cotton	1765
Oct.	1	1000 "	650
	5	1000 "	1145
	11	50 corn	225
		Cash	300
		"	140
		"	60
	12	Check	2215
Nov.	12	Cash	45
		"	155
		"	250
		"	250
	14	Check	2300
Dec.	16	Cash	100
	17	"	100
		"	100
	21	"	100
	21	"	100
	21	"	237.50
Dec.	22	Cash	100
	22	"	437.50
1905.			
Jan.	9	"	200
	16	"	65
		"	25
		"	10
		"	100
	17	100 May wheat	562.50
	25	Tran. to year stock	200
		200 May wheat	937.50
		Check	23,856.25

CR.

1904.			
Aug.	9	Check	2000
	31	Amt. Thro Wald Ast. Bch.	2500
Sep.	2	1100 Dec. cotton	2115
	10	Amt. Thro Wald. Bch	1500
180		Check	350
		Amt. Thro Wald Bch	150
	13	40 May wheat	2537.50
	26	Currency	4000
	30	Check	1000
Oct.	10	"	1000
	11	"	500
Nov.	10	"	3000
Dec.	16	Cash	100
	17	Check	10000
		Cash	100
	21	"	100
		"	100
	22	"	100
	28	Check	10000
	30	100 May wheat Mil	1468.75
	31	100 " " "	2262.50

Memorandum from Charles G. Gates & Co., 14–16–18 *Wall Street.*

NEW YORK, ——, 1904.

L. C. Van Riper:

We have the following trades open for your account.

	Bought.				Sold.			
1904.					1904.			
Aug.	300	Dec. Cotton		1040	Sept. 13	300	Dec. Cotton	1080
	100	"	"	1033		400	" "	1089
	300	"	"	1040		100	" "	1077
	400	"	"	1033		100	" "	1076
9 26	300	"	"	1064		200	" "	1076
	200	"	"	1063		500	" "	1031
	500	"	"	1062		500	" "	1030
9 30	1000	"	"	1023		1000	" "	1013
10 5	200	"	"	1017		1000	" "	998
	700	"	"	1018				
	100	"	"	1019				

181 By Mr. WORTHINGTON:

Q. As to the December transaction, there being no crop report in November, you have told us that you began as early as the 10th of November?

A. Yes sir.

Q. And your operations continued through the month of November?
A. Yes sir.

Mr. WORTHINGTON: I would like to have that Liverpool statement again.

By Mr. WORTHINGTON:

Q. I show you this exhibit No. 204, being the statement of Waterhouse and Sons, with reference to your operations in cotton in November, 1904. I think you told us yesterday that you began selling cotton on November 10th and sold on the 10th, the 17th, the 18th and the 23rd?
A. Yes sir.
Q. How many bales during those dates?
A. 5000, I think.
Q. 5000 bales?
A. Yes sir.
Q. By the other side of that account it appears you sold that out on the 26th?
A. I bought it in.
Q. Did you buy in 5000 then?
A. I think so.
Q. I see by comparing the figures that you bought it in at a good deal less than you sold it out?
A. Yes sir.
Q. And that is where you made your profit?
A. Yes sir.
Q. That is a part of the profit that entered into this $166,000 profit that you have told us about?
A. Yes sir; that is the $18,300 item.
Q. That cotton was all sold between the 10th of November and the 26th of November?
A. That's right.
Q. On what information from Mr. Holmes or purporting to come from Mr. Holmes did you act upon in that matter?
A. Upon the advice of Mr. Haas.
Q. Do you mean Mr. Haas gave you information which purported to come from Mr. Holmes?
A. Mr. Haas suggested to me it would be a good plan to close it out on account of the market having broke and that Mr. Price would be taking on some cotton to put out at a higher price.
Q. I am not asking you so much about when you bought it back as about what the information was that purported to come from Mr. Holmes which induced you to sell, in expectation that there would be a fall in the price?

Mr. BAKER: He has answered that he did not get the information from Mr. Holmes but from Mr. Haas. He has answered the question fully and I don't see why it should be put to the witness again.

By Mr. WORTHINGTON:

182 Q. Do you mean that the information which Mr. Haas gave you did not purport to come from Mr. Holmes at all, about that trade?

A. I have already testified fully regarding that, I think. I testified that Mr. Holmes thought the report would be bearish, and Mr. Price had begun to sell around the 10th of November, and Haas advised that I begin to sell.

Q. I am very anxious in regard to this matter to confine my examination now not to your buying, but to your selling. You sold from the 10th to the 23rd about 5000 bales?

A. Yes, sir.

Q. I want to know if, at that time, you were proceeding upon any information that you understood to come from Mr. Holmes through Mr. Haas or anybody else?

A. Mr. Holmes through Mr. Haas.

Q. What was the information that came to you from Mr. Haas which you understood to come through Mr. Holmes upon which you sold that cotton between the 10th and the 23rd of November?

A. Mr. Haas told me that Mr. Holmes thought the report would be very bearish.

Q. That he thought the December report would be very bearish?

A. Yes, sir; and that Mr. Price was selling cotton.

Q. Did Mr. Haas tell you anything about how Mr. Holmes knew as early as the 10th of November, that the cotton crop report on the 3rd of December, was going to be bearish?

A. No, sir.

Q. Or whether it would be bearish or bullish?

A. No, sir; he never claimed to know at that time.

Q. What was it you understood from Mr. Haas about the information from Mr. Holmes?

A. It was merely Mr. Holmes' own judgment from the information he had.

Q. Do these accounts just balance; are there 5000 bales on each side?

A. There are 6000 bales on each side. I made a mistake about that.

Q. Now, let us take up this next exhibit, which is No. 205. If I correctly understand the exhibit you sold a lot of cotton on the 28th of November?

A. Yes, sir.

Q. And you bought it back on the 7th of December?

A. Yes sir.

Q. How much?

A. 5000 bales.

Q. You bought it all on the 28th of November?

A. Yes sir.

Q. And sold it out on the 7th of December at a profit?

A. Yes, sir.

Q. On what information did you act with reference to the prospective December cotton report on the 28th of November, 5 days before——

183 A. The same information that I did on the other.

Q. That is Mr. Haas told you that Mr. Holmes, exercising his general knowledge and judgment about these matters thought that the December report would be bearish?

A. Yes sir; and that Mr. Price was selling.

Q. That entered into it also?

A. Yes sir.

Q. The cotton crop report for December was first given out, as we see here, on the 3rd of December, and, in the preliminary report gave the figures at 12,162,000 bales as the estimated total production?

A. Yes sir.

Q. Why was it you did not buy back until the 7th of December?

A. The market was going down and Mr. Haas thought it would be better to buy it at a cheaper price, by waiting.

Q. Did it actually keep on going down?

A. Yes sir.

Q. For four days afterwards?

A. You see this report, if I remember correctly, came out on Saturday, so that it was the 5th before we could do anything.

Q. Is that so?

A. That is my recollection.

Q. The report gets to New York within a few minutes after it is issued down here?

A. I think it was issued there at 11:15.

Q. It would be in New York by 11:20?

A. No sir; it was supposed to be there at 11:15. It was an instantaneous flash.

Q. The cotton exchange hours are what?

A. They close at 12 o'clock I think on that day.

Q. On Saturday?

A. Yes sir.

Q. In December?

A. Yes sir.

Q. Are you sure about that?

A. I am pretty sure about it; it might have been one. They have held open until one o'clock; but I think on this day they close at 12 o'clock.

Q. December 3rd, you think, was Saturday, and the Exchange closed at noon.

A. That is my recollection.

Q. Then you allowed Monday and Tuesday to go by.

A. Yes sir; because there was almost a panic on the Cotton Exchange and the market was breaking right along.

(Exhibits Nos. 204 and 205 are admitted in evidence, and are in the words and figures following, to-wit):

184 LIVERPOOL, *26th November*, 1904.

Lewis C. Van Riper, Esq.:

Nich's Waterhouse & Sons.

For difference on 6000 Bales Cotton, March & April, 1905, delivery.

Purchases.			Sales.				
Date.	Amount.	Price.	Date.	Amount.	Price.	Points difference.	In your favor.
Nov. 26.	1800	5–11	Nov. 10.	1800	5–33	396	792
"	200	5–11	"	200	5–32	42	84
"	100	5–11	17.	100	5–34	23	46
"	1600	5–12	"	1600	5–34	352	704
"	100	5–12	"	100	5–33	21	42
"	200	5–13	"	200	5–33	40	80
"	1000	5–13	18.	1000	5–29	160	320
"	1000	5–13	23.	1000	5–13	.....	.....
							2068

Clearing house stamps, 310.
Brokerage on 63510 at ½% 31711. ..... 321.1

Difference now due you less interest to 10 April, 1905,
135 ap. at 5% 1746.19
32. 6

1714.12.11

185 (205.)

LIVERPOOL, 8 *December*, 1904.

L. C. Van Riper, Esq., New York:

Nich's Waterhouse & Sons.

For difference on 5000 bales cotton, M'ch, Ap'l, 1905, delivery.

Purchases.			Sales.				
Date.	Amount.	Price.	Date.	Amount.	Price.	Points difference.	In your favor.
Dec. 7.	600	127	Nov. 28.	600	520	558	1116
" "	200	127⅛	" "	200	520	185	370
" "	600	127⅛	" "	600	519	549	1098
" "	600	128	" "	600	519	546	1092
" "	1000	129	" "	1000	518	890	1780
" "	1500	129	" "	1500	517	1320	2640
" "	500	129½	" "	500	517	437½	875
							8971

Clearing house stamps, 2 18 4.
Brokerage on 518 16 at ½% 259. 1 7. ..... 261 19 11

Difference now due you less interest to 10 Apr., 1905... 8709– 1

E. B. S.

Q. This next paper is Exhibit No. 206 and represents 5000 more bales that you sold on November 29th and bought on December 7th?
A. Yes sir.
Q. The same explanation, I suppose, would apply to that?
A. Yes sir.
Q. With respect to the information from Mr. Holmes?
A. Yes sir.

(The above mentioned Exhibit No. 206 is in the words and figures following, to wit:)

186 (206.)

LIVERPOOL, 8 *December*, 1904.

L. C. Van Riper, Esq., New York:

Nich's Waterhouse & Sons.

For difference on 5000 bales cotton, M'ch, Apr., 1905, delivery.

Purchases.			Sales.				
Date.	Amount.	Price.	Date.	Amount.	Price.	Points difference.	In your favor.
Dec. 7.	500	429½	Nov. 29.	500	507	287½	775
	600	429½		600	506	459	918
	900	430		900	506	684	1368
	600	430		600	505	450	900
	400	430½		400	505	298	596
	300	431		300	505	222	444
	700	432		700	505	511	1022
	400	432		400	503	284	568
	600	433		600	503	420	840
							7431
Clearing house stamps, 2 18 4.							
Brokerage on 505.10 at ½%, 252 11.....							255 9 4
Difference now due you less interest to 10 Apr., 1905..							7175 10 8

187 Q. In all these transactions he was exercising his judgment generally as to what the report was going to be?
A. Yes sir.
Q. When you bought back you had the same knowledge that everybody had?
A. Yes sir; but we had the advantage of knowing that the report was 24 hours ahead of any one else.
Q. I understand about that, but I want to see what, if anything, you actually did in the way of reaping any benefit from getting information about this report, after it was prepared and before the public had it?
A. I sold more cotton through Mercer.
Q. I understand that you sold from the 10th to the 29th of November, and bought back on the 7th?

A. Yes sir; and I sold more cotton through Mercer on the day of the report. I sold some more through Hubbard Brothers.

Q. I am coming now to the other matters, Mr. Van Riper, can you tell us how much of this profit of $166,000 and odd which you made on these transactions through Waterhouse & Sons, is represented by these exhibits Nos. 204, 205 and 206?

A. Eighty odd thousand Dollars.

Q. Just about one half of it.

A. Yes sir.

Q. Before I go on with these statements, I wish you would tell us just when and from whom you received any information about the cotton crop report of December 1905, after the 29th of November, and before the report was given out?

A. I received it from Mr. Haas.

Q. When, how and what was it?

A. I received that the morning before the opening of the market. I had practically the exact figures.

Q. You did not get that in writing?

A. No sir; I got it over the phone.

Q. You have not got anything in writing you can exhibit to us about that; have you?

A. No, I don't think so.

Q. That you say was about what time on the morning of December 3rd?

A. About nine o'clock.

Q. On the morning of December 3rd Mr. Haas called you on the telephone. What did he say?

A. He said the acreage would show nearly 12,200,000 bales, and that would be exclusive of linters.

Q. Did he say in that telephone conversation, anything about the sources of his information; or was that taken for granted?

A. That was understood. He says: "I have a code message from the Colonel.

Q. Did Mr. Haas purport to be in New York at the time you had this telephonic conversation with him?

A. Yes sir; he didn't say, but it sounded like a local call.

Q. Did you recognize his voice?

A. Yes sir.

188 Q. Is that all the information that you received from anybody between the 29th of November and the time this December 3rd report was issued, with reference to what it was going to be?

A. That practically is all; yes. As far as I recall, now.

Q. Now, I show you exhibit No. 213, which appears to be an account current with Hubbard Brothers, which the District Attorney hands me, the books being here, and it being more convenient to use them, and ask you to tell me when you began your transactions with Hubbard Brothers with reference to the December 3rd, 1904, cotton report, and what your transactions were?

A. On November 22nd I sold 500 bales at $9.74 and 500 at $9.73. On the 23rd sold 100 at $9.73 and 100 at $9.73 and on the 25th 700 at $9.48.

Q. That made 1900 bales which you sold through Hubbard Brothers between the 22nd and 25th of November?

A. Yes sir.

Q. When did you buy it back, as the phrase is?

A. I bought it back on the 26th?

Q. So as to that transaction it was begun on the 22nd and finished on the 26th of November?

A. Yes sir.

Q. How much of this $166,000 and odd profit *that* did you get out of that transaction?

A. That shows a profit of $1090.

Q. $1090 less the commission?

A. No; the commission is taken out.

Q. Your account shows $13,975, and after deducting the commission there was $1090 turned over to you?

A. Yes sir.

Q. Now proceed.

A. On the 28th, 1,000 bales at 974; 500 bales at 964; and 500 bales at 963. That was bought in on the 30th at 926, making a net profit of $3,975.

Q. What was the next?

A. On the 28th I sold 1000 bales at 964.

Q. I do not care about the prices. Just give the total and the profit.

A. On the 28th and 29th, I sold 5000 bales, showing a net profit of $4285.

Q. That transaction was all completed on the 30th of November?

A. Yes sir.

Q. Now proceed.

A. On the 30th of November, after closing that up, I presume, although I am not sure of that—I sold 3,000 bales, which I bought in on December 1st, showing a profit of $5,785. Then on December 1st I sold 1,000 bales which I bought in on December 7th at a profit of $4,100. On the same day, December 1st, I sold 3,000 bales, which I bought in on December 7th, at a profit of $14,925.

Q. What other houses did you deal with with reference to this December 3rd, 1904 cotton report?

A. With L. H. Mercer.

By Mr. WORTHINGTON:

Q. Can you tell us, Mr. Van Riper, whether or not the papers I have just gone over with you in reference to the Hubbard & Brothers' account sales show all your dealings through them with
189 reference to the December 3rd, 1904, cotton crop speculation or report?

A. I have showed all my dealings so far as Haas was interested.

Q. Well, so far as Mr. Holmes was concerned?

A. I do not know that he was concerned; I did not know at that time.

Q. So far as Haas was concerned, then?

A. Yes sir.

Q. I do not want to be hypercritical with you; but I understood you to have said that you paid Mr. Haas quite a large sum of money, and that he told you he wanted it in cash, and you saw him turn it over to Holmes?

A. Yes sir.

Q. Here are two other papers that purport to be accounts of Hubbard Brothers & Company of your transactions about that time. Will you look at them and tell us whether you can add anything to the stock of information we have got on that December 3rd speculation?

A. I think this is a repetition of just what we have read, Mr. Worthington, except that it includes later transactions.

Q. If there are any later transactions what are they?

A. January——

Q. Well, I do not care about going into January.

A. Later in December and January.

Q. Later in December?

A. Yes sir.

Q. Do these papers show that you bought or sold anything, any cotton, prior to December 3rd, 1904, except what we have already been advised?

A. I do not think so.

Q. Then according to your recollection we have all the information about that except as to your transactions with Mercer & Company?

A. I think so.

Q. Are you able to tell us from your recollection, what they were?

A. Not without referring to the statements. I remember what the profits were, about.

Q. What were they?

A. About $53,000.

Mr. WORTHINGTON: We have not any statements or any books here in reference to them, so I am unable to——

Mr. ADKINS: We have his memoranda.

The WITNESS: I have memorandums here that show, Mr. Worthington.

Mr. WORTHINGTON: Oh, yes; that is true. You have the memoranda. I might as well take those up at this point. Let me see those—53 A, B, and C, or whatever they are.

Mr. ADKINS: And we have the book of Mr. Mercer himself, if you care for that.

Mr. WORTHINGTON: Well, that appears to be rather an ambiguous kind of book. I understand Mr. Mercer is to be here?

Mr. ADKINS: Mr. Mercer will explain that. It shows when the transactions were closed.

Mr. WORTHINGTON: What I am particularly concerned about is to see when they began; and I understand this book does not show that?

190 Mr. ADKINS: No.

By Mr. WORTHINGTON:

Q. I show you what I understand to be the memoranda you

have referred to, Mr. Van Riper, being exhibits 53 B, 53 C, and 53 D. Is there anything on them—I show them to you—which will enable you to inform the jury when these dealings through Mercer & Company began which resulted in this profit of $53,000?

A. No. I had this, which shows the exact amount, $53,670; but the various items I had confused with the later deal on the ginner's report, which is shown in this memorandum.

Q. Is there anything in those memoranda which will enable you to tell the jury when your transactions through Mercer & Company, resulting in that $53,000 profit, began?

A. No sir; but I think if you would show me Mr. Mercer's book I could give you that.

Mr. WORTHINGTON: The witness says, Mr. Adkins, that he thinks if he sees Mr. Mercer's book he can work it out.

Mr. ADKINS: Mr. Lester has it.

By Mr. WORTHINGTON:

Q. This is rather an uncertain way of getting at things, Mr. Van Riper, but I am in pursuit of information. I show you what the District Attorney hands me as the book of Mercer & Company, or Mr. Mercer's book; and if there is anything in it which will enable you to inform us when your dealings with them to which you have referred began, I would like to be advised of it.

A. No, Mr. Worthington, there is not. It only shows the profits and losses. I thought it probably showed the transactions.

Mr. WORTHINGTON: How about the June 1905 transactions. Is there anything here to show when they began?

Mr. ADKINS: I think that will appear from Hubbard's books.

By Mr. WORTHINGTON: In the transaction which resulted in the loss which occasioned your grief in June 1905, through what bankers——

Mr. BAKER: I object to that question, because there has been no testimony here that there was any loss.

Mr. WORTHINGTON: I have understood Mr. Van Riper to say there was.

Mr. LESTER: He said there was "a beautiful loss."

The COURT: He said if he had closed out at a certain time there would have been.

Mr. BAKER: That is what he said, yes.

Mr. WORTHINGTON: He said "I sustained a beautiful loss." I remember that expression struck me as being odd.

Mr. ADKINS: He said he would have sustained it.

The COURT: Well, the jury know what you are referring to; it does not make any difference whether there was a loss or not.

By Mr. WORTHINGTON:

Q. I want to know if there is anything here which will show when those operations began?

A. Mr. Hubbard's books will show the operations through that firm.

191 Q. Had you transactions with other brokers than Hubbard Brothers?

A. Yes sir.

Q. Who were they?

A. L. H. Mercer and A. J. Buston & Company of Liverpool.

Mr. WORTHINGTON: Have you got the Liverpool statements here?

Mr. BAKER: No; we have not got any statements here in regard to that.

By Mr. WORTHINGTON:

Q. You cannot tell us when those operations began?

A. Yes sir; I can. They began on May 31st.

Q. On the 31st day of May?

A. Yes sir.

Q. Through all these various brokers?

A. Yes sir.

Q. And that is the information you have already told us about?

A. I would not swear about Buston on that day; but Hubbard and Mercer, I know, and Gates.

Q. That was upon the information you have already told us about, that you got through Mr. Haas?

A. Yes sir—May 31st, and C. G. Gates too.

Q. Very well. There is another of the speculations, Mr. Van Riper, that I want to inquire about next. That has some connection with the ginner's reports. That was something that took place in November 1904?

A. Yes sir.

Q. What was the beginning of that deal?

A. Well, when Mr. Holmes and Mr. Haas were in New York, on the 11th or 12th of December, Mr. Haas suggested to Mr. Holmes that he, as the head of the Department, as associate of the head of one of the Departments, go and have a friendly talk with Mr. North of the Census Bureau and confer with him and try and find out in that way, as near as he could, what the indications were for the ginner's report; and he was to use the argument that the Government cotton report had been criticised considerably, and that they were very anxious to know whether the Census Bureau would confirm the Government report. Then Mr. Haas came back—Mr. Haas came down to Washington, and after that came back and reported that he had seen Mr. Holmes; Mr. Holmes had had this conference with Mr. North, and Mr. North had assured him that it would not only confirm it but that it would show even a larger yield than the Government report had, from all the indications, and then asked me to sell a certain number of bales of cotton for Haas' and my joint account, which I did.

Q. Your understanding was, then, that this additional confirmation of the large production of cotton would bear the market still more?

A. Yes sir.

Q. And you would sell the cotton and buy it in when the effect of that report had taken place?

A. Yes sir.

Q. So that transaction which related entirely to information — to be obtained from the Census Bureau?

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A. Yes sir.

Q. It had not anything in the world to do with the Bureau of Statistics?

A. Except as I have stated, that Mr. Holmes used his official position in order to try and find out and get this information.

Q. As I understand you, the profit that was made in that transaction was not any part of this $166,000 which you have told us about?

A. No sir; that was additional.

Q. That was separate?

A. Yes sir.

Q. You explained to us yesterday that your feeling was toward Mr. Holmes and Mr. Haas when you went to see the Secretary in June 1905. What were the relations between you and Mr. Peckham at that time?

A. Very friendly.

Q. Did you mention his name at all to the Secretary?

A. I am not positive whether I did or not. As I stated yesterday, I did not mention anybody that I could avoid.

Q. At that time you gave to the Secretary these letters which you have produced here and say that you received from Mr. Peckham?

A. Yes; I had to give them to him.

Q. What?

A. I practically had to give those to him, or thought I had to.

Q. Why did you think you had to expose Mr. Peckham?

A. I think they had been given to Mr. Cheatham. I am not positive at this time, but I think I gave those letters to him when he came.

Q. By the way, how did you come to call Mr. Cheatham to your assistance when you went into this explanation to the Secretary?

A. Well, sir, there had been quite a good deal of newspaper talk about the reduction of acreage. The Southern Cotton association had been very prominent and had been holding mass meetings through the South at that time, urging the planters to reduce their acreage; and they had *had* already had a controversy with the Statistical Department over leakage in reports; and I figured that if Mr. Cheatham or one of the officers of that Association were brought in and went to Mr. Wilson, they would get a hearing, whereas if I went there, being unknown to him, he would probably think that it was like other reports—there would be nothing to it.

Q. Did you know Mr. Cheatham before that?

A. No sir.

Q. You had not had any dealings with him?

A. Yes sir.

Q. Or acted for him as a broker?

A. No sir.

Q. Or received information from him?

A. No sir.

Q. How did you get acquainted with Mr. Peckham?

A. Oh, I met him, I think, in the early part of 1904 or latter part of 1903.

193 Q. You have said Mr. Peckham introduced you to Mr. Holmes?

A. Yes sir.

Q. Who introduced you to Peckham?

A. Mrs. Peckham.

Q. Have your relations with Mr. Peckham continued to be friendly?

A. I never had a word with him in my life.

Q. There is no unkind feeling between you and him so far as you know?

A. Not so far as I am concerned.

Q. Have you any reason to believe that he has against you?

A. No sir; excepting over this cotton report.

Q. Did Mr. Peckham threaten to kill you once in the Imperial Hotel?

A. Never. I never had a word with him in my life; always friendly.

Q. How long since you met him and talked to him.

A. I have not meet him since I came down to Washington, to talk to him.

Q. Since you came down to Washington in June of 1905?

A. Yes sir.

Q. He has been over there in business ever since; has he not?

A. I don't know.

Q. You do not know whether he has been engaged in business in New York since then or not?

A. No sir; I don't know anything about him.

Q. Mr. Haas is still over there running a brokerage office?

A. I don't know about that; I have not talked to Mr. Haas.

Q. Since that time?

A. No sir.

Q. Is Mr. Price still carrying on his business there?

A. I assume so. I see his name in the paper every day.

Q. Did not Mr. Holmes introduce you to Mr. Haas at the Imperial Hotel in New York?

A. He did not.

Q. Did you meet Mr. Haas there just after Labor day in 1904 early in September?

A. No sir.

Q. Do you recall taking a trip in an automobile to the Atlantic Yacht Club with Mr. and Mrs. Peckham and Mr. and Mrs. Holmes?

A. May be I am mistaken about that Mr. Worthington; but I did not remember meeting Mr. Haas there. Maybe I did meet him there.

Q. Refreshing your recollection——

A. But if I did, there was nothing said about these other matters. I had forgotten entirely if I did meet him there.

Q. Do you remember now, since I have attempted to refresh your recollection?

A. I believe I did meet him there, for this reason—this it what now reminds me of it: That Mr. Haas was going to vote——

Q. Going to what?

A. Going to vote. That must have been in September and we joked him about his being on the wrong side, or something, and I remember now that I jollied him along and made him lose
194 his vote; and we had a little fun about that. He could not get over to vote; so it must have been September. But that incident had entirely passed my memory before, when I said I met him first at——

Q. You remember the automobile trip do you, now?

A. Oh yes.

Q. You went down to the Yacht Club?

A. Yes sir.

Q. You were a member of that club?

A. Yes sir.

Q. And somebody was taken sick in the party, and had to stay there?

A. Yes sir, yes sir.

Q. That was Mrs. Peckham, was it not?

A. Yes sir.

Q. How nearly can you fix the time of that meeting with Haas which you had forgotten all about?

A. Well, it was just before Election day, I remember now.

Q. Just before Election Day?

A. I mean, either before or on Election day.

Q. That is in November?

A. Either just before or on Election day.

Q. What day do you have your election in New York.

A. Well, it was in September. Oh no; it was not, either. That is right. No; then I did not meet him there. I guess it was—no, no, I am wrong about that. I don't remember that I did meet him there in September. It was in November; that is right.

Q. You have said you remember the automobile trip?

A. Well, I do remember that, but Haas was not there then.

Q. When was that? Do you say that was in November?

A. I don't remember the date of that automobile trip now; but Mr. Holmes and Mrs. Holmes were there on a visit to Mr. and Mrs. Peckham.

Q. Did you go down to the Yacht Club with that party more than once in an automobile?

Mr. BAKER: I object.

A. I may have.

Mr. BAKER: I object to "that party" unless it refers to some party to this proceeding.

Mr. WORTHINGTON: I am referring to Mr. and Mrs. Peckham and Mr. and Mrs. Holmes; that is the party.

Mr. BEACH: The automobile party.

A. I don't remember that I ever met Mr. Haas until I met him here at the Willard; but I know that he was there at the Imperial on

Election day. I was confused on the date of Election day when I first answered your question.

By Mr. WORTHINGTON:

Q. Do you remember of going on that automobile trip with Mr. and Mrs. Peckham and Mr. and Mrs. Holmes?

A. Oh, yes sir.

Q. Down to the Yacht Club?

A. Yes sir.

Q. When was that?

A. I think that was in September.

195 Q. After you returned from that trip, did you not meet Mr. Haas that same day at the Imperial Hotel?

A. I do not think I did. I do not have any recollection of it now. In fact, I do not remember of ever seeing Haas but once before I met him here in the Willard Hotel. He was pointed out to me prior to that.

Q. Will you say positively that you did not meet him as early as the latter part of September, 1904, at the Imperial Hotel?

A. I will say that I do not recall at this time ever having met him until I met him here in October.

Q. I understand you to say you can not recall it; but do you think your recollection is so distinct that you will say positively you did not meet him early in September, 1904, at the Imperial Hotel in New York?

A. I do not remember ever having met him there now. Something might refresh my recollection.

Mr. WORTHINGTON. I wish you would let me see this correspondence now—these letters which he says were written from Mr. Holmes and by Mr. Peckham to him; the indictment papers, so to speak?

(Certain papers were handed to Mr. Worthington.)

By Mr. WORTHINGTON:

Q. I show you the letter of August 30th, 1904, exhibit 7, which I understand you have said is in Mr. Holmes' handwriting, in pencil—two pieces of paper written in pencil—which begins: "If you have bought any of that stuff, sell it out at once, and sell as much as you can in addition." Did you, on receipt of that missive, sell anything?

A. Yes sir, I sold cotton.

Q. What do you say?

A. Yes sir.

Q. You did sell cotton?

A. Yes sir.

Q. Through what broker?

A. I have already testified to that this morning, through these statements here. On August 31st there you will see sales.

Q. Oh yes. In the meantime you had received a communication from Mr. Peckham, had you not? (To counsel for the United States.) Have you that communication?

A. My recollection is that I did not hear from Peckham until the following day—the day after I received that letter.

Mr. BEACH: Here are the Peckham letters. It is dated subsequent to that.

Mr. WORTHINGTON: Yes—August 31st.

By Mr. WORTHINGTON:

Q. "We are going to show," this goes on, "very slight decline." As a man acquainted with that business, can you give the jury any idea of what would be called a slight decline or a large rate of decline?

A. A slight decline in the condition — percentage—that is, for the month of August there is usually a large decline in the percentage conditions; and this year that letter indicated that the decline would not be as much as usual.

196 Q. Suppose the figure for one month is 90—that is, that the anticipated crop is expected to be 90 per cent of a full crop: What would you say might be a slight decline the next month?

A. That would be comparative, of course. That is, if the yearly decline showed twenty points, why, a five point decline would be a slight one. It would be comparative with past years.

Q. Suppose the figure was 90, let us say, in August, and you are told there is going to be a slight decline in September—about what would you expect it to be?

A. It would depend entirely on the comparison with other years as to what you would figure would be a slight decline.

Q. Take it in comparison with other years; you know what previous years had been, I suppose?

A. No; I have not got that all in my head; but I know that in August usually it is expected that the condition will show a pretty good decline over the month previous.

Q. When you say a "pretty good decline," what do you mean,—from 90 to 85 or from 90 to 80, or what?

A. I do not know what the average is, but it is a month that generally shows a deterioration from dry weather, summer dry weather.

Q. That does not help me a particle, Mr. Van Riper. You said just now you would expect a very good decline on account of August being a bad month and drying up the crops.

A. Yes sir.

Q. Now, what did you mean when you said "a very good decline"—how many points?

A. Well, I don't know. I would have to compare it with past years—the average ten year condition, for instance.

Q. Now, I have the letter of Mr. Peckham of the next day——

Mr. BEACH: What is the date, Mr. Worthington?

Mr. WORTHINGTON: August 31st.

Mr. ADKINS: Which letter? There are two letters of that date.

Mr. WORTHINGTON: Oh, yes. This is the one which is not headed "No. 2."

Mr. BEACH: That is the Exhibit Number.

By Mr. WORTHINGTON:

Q. "About 85," it begins. What did you understand by these figures?

A. Well, I could not understand anything without comparing and reading the rest of the letter.

Q. Without comparing what?

A. Without comparing it with other months, other years, or reading all the letter. What does he say after that?

Q. "About 85. It will surprise everybody, and cause big drop, is opinion of best experts. There will be things doing sure. A drop of only (about) six points. This is one of the highest 197 averages for this (Sept.) month ever known. Is way above the ten year average. Tear this up. Do all you can. F."

A. I understood it would be a very bearish report from that.

Q. What did you understand about the figures by that expression "about 85"?

A. I understood it would be considered very bearish, and would make the market break.

Q. Did you understand or not that that meant that the Government crop report would show for December that the prospective cotton crop report would be 85 per cent?

Mr. BEACH: You mean September, do you not? You said "December."

Mr. WORTHINGTON: Did I say "December"?

Mr. BEACH: Yes.

Mr. WORTHINGTON: I meant September.

A. Yes sir.

By Mr. WORTHINGTON:

Q. And you understood then that Mr. Holmes had informed Mr. Peckham on the 31st of August that the figure for the September report would be about 85?

A. Yes sir, and I can give you a little more information how he got that if you wish it.

Q. I would be very glad to have all the information you can give me on that subject.

A. Mr. Peckham told me that Mr. Holmes went in and opened certain reports unknown to Mr. Hyde that night, and was able to tell that farther in advance than usual, and that he resealed them, and that Mr. Hyde never knew about it.

Q. Did he tell you what reports he had opened?

A. No sir.

Q. That is, what reports Mr. Peckham said Mr. Holmes had opened?

A. No sir.

Q. When was it Mr. Peckham told you that?

A. When I saw him next after that.

Q. When did you see him next?

A. I am not positive as to the date.

Q. This reads "is opinion of best experts." Did you have any

understanding at the time you received this, or at any other time, of what he meant by saying that that was the opinion of the best experts?

A. No sir; but I assumed he meant Mr. Holmes, because that was the only one that I understood he was here in conference with.

Q. You understood, when he said that that was the opinion of the best experts, that he meant Mr. Holmes alone?

A. Yes sir.

Q. And that it was not his opinion at all, but that he had stolen it out of the papers?

A. No sir—how is that question?

Q. I say, when he said "That is the opinion of the best experts," you understood that to mean that it was not anybody's opinion, but that it was Mr. Holmes' knowledge from opening envelopes?

A. I think that opinion refers to the effect it would have on the market, if you will read the letter carefully.

Q. "It will surprise everybody and cause big drop, is opin-
198 ion of best experts."

A. It would break the market—that was their opinion—because it would be a surprise to the cotton trade.

Q. You understood, that Mr. Peckham, then, had communicated this information to various experts and had received from them the opinion that that would be the effect?

A. No, sir; I did not understand anything of the kind. I did not assume that he was in conference with anybody here except Mr. Holmes.

Q. Then how do you account for his saying to you that that was the opinion of the best experts, if he was simply telling you that Mr. Holmes——

A. I assumed that he did not want to mention Mr. Holmes' name, and merely thought I would understand who he meant.

Q. He was writing this, then, so that somebody else who might see it would not know what it meant. That was your idea?

A. I don't know what his idea was.

Q. What was your idea about what his idea was?

A. I don't know what his idea was?

Q. Very well. I see this says, "Tear this up." Did you tell him you had torn it up?

A. I never referred to it.

Q. Why did you preserve it when he had asked you to tear it up?

A. Why, I never intended to preserve any of them, but put them in my safe, in my private box, intending to destroy them when I got around to it; but I neglected it, and it has not been done.

Q. Was that the reason you took the paper that was torn up out of the waste-paper basket to preserve it?

A. No, sir. At that time I had reason to suspect Mr. Haas.

Q. Suspect him of what?

A. Suspect him of being unfriendly to me.

Q. Your view about that was not changed was it when you were deceived in June?

A. He did not deceive me about the report.

Q. What did he deceive you about?

A. About Price's operations, and about his putting up his share of the money.

Q. Then why was it that although Haas had treated you in that way, given you that reason to suspect him in December, and then went back on you, as you understood, in June, that you kept his name back from the Secretary and gave Mr. Holmes'?

A. Because I gave no names or no information that I did not have to give. I reserved the right to refuse to answer questions, and I did refuse to answer questions that they asked me.

Q. What questions?

A. Well, I refused to answer several questions.

Q. You afterward did answer them to somebody, I suppose, representing the Government?

A. I was subpœnaed and put under oath to tell the truth, the whole truth and nothing but the truth; and that is the reason why I am trying to tell it now.

Q. Thank you. Do you mean you were subpœnaed here?

199 A. Yes sir.

Q. Well, this is not the first time on the stand that you have told somebody representing the Government this story; is it?

A. I have not told all of it to anybody before.

Q. What part of it did you not tell anybody until you got on the stand here?

A. Well, there is a good many of the details that I have not told before.

Q. Well, you told long ago, did you not, to somebody representing the Government, that you had this arrangement that you say was made on the 9th of August or on the 7th of August?

A. I told certain parts of it.

Q. Did you tell them, before you were on the stand — Did you tell anybody representing the Government about the division of money that was made on the 11th or 12th of December?

A. I told Mr. Beach recently about it.

Q. Oh, well, you told him about it long before did you not, Mr. Van Riper?

A. Not all the details.

Q. Did you not tell him about this division of money? That is what I am asking you about now.

A. Not all of it.

Q. Did you not produce the checks?

A. I produced certain checks; yes.

Q. Checks showing that division?

A. Some of them.

Q. When was it that you produced some of them to Mr. Beach?

A. When I was subpœnaed to appear before the Grand Jury.

Q. You went as a witness before the Grand Jury?

A. Yes sir.

Q. Before that you had had an interview with Mr. Beach, I suppose, telling him about these things?

A. What is the question?

Q. Before that you had had an interview with Mr. Beach and told him about these transactions?

A. My recollection is that I never saw Mr. Beach until I saw him in the Grand Jury room.

Q. Had you seen anybody else representing the Government? I am not sticking about names?

A. No sir; except Mr. Wilson and Mr. Walsh.

Q. Had you sent your attorney down here to see them?

A. No sir, not before I was subpœnaed down here; except that Mr. Taylor came with me the day that I came down to see the Secretary.

Q. You had no understanding with anybody that you were not to be prosecuted?

A. I had no understanding of any kind, except that when I went before the Grand Jury I made a statement that I would reserve the right to answer or refuse to answer such questions as I saw fit, the first time I was subpœnaed down there. The second time I was subpœnaed down there Mr. Beach read or entered in the minutes of the Grand Jury that any information that I gave the Grand Jury would not be used against me, in that court or any other court. That is as far as any understanding I have ever had with anybody is concerned.

200 Q. You did not know how it happened that you were not indicted when Mr. Holmes, Mr. Haas and Mr. Peckham were?

A. I always assumed that I was not liable to indictment.

Q. That you had not done anything that was wrong?

A. Yes sir.

Q. And therefore you did not require any arrangement of that kind?

A. No sir.

Q. How long an interval was there between the time you came down first and the second time for the Grand Jury?

A. Oh, it was—I could not say; it was some little time.

Q. You told more the second time than you did the first; did you not?

A. Yes sir.

Q. What had happened in the meantime to change your views about it?

A. Nothing.

Q. Did not Mrs. Peckham come down here at the second time and use her influence with you?

A. Well, I don't know, whether she was down here before I was down; I don't think she was. I think I was down here before Mrs. Peckham came here.

Q. Did you not meet her here before you went before the Grand Jury the second time?

A. No sir.

Q. You did not see her here in Washington at that time at all?

A. No sir.

Q. Now, as a matter of fact, did you not come to Washington on the same train with her?

A. No sir.

Q. You are clear about that?

A. Yes sir.

Q. I think you mentioned yesterday that you had an attorney named Brainsbee—John W. Brainsbee?

A. I can explain, I think, if you want me to, where you got that idea. Mrs. Van Riper came down with her.

Q. Go on, sir, if you are a mind reader, and tell me how I got that idea.

A. Well, I suppose that was the way you got it.

Q. About Mrs. Peckham, you mean?

A. Yes sir.

Q. Well, if you want to make any explanation about it, that is your privilege.

A. I say, Mrs. Van Riper and her and one of my daughters came down here together.

Q. Was that between the time you were first before the Grand Jury and the second time?

A. I think it was after I was there the second time. I am not positive. That is my recollection.

Q. Did you make a stipulation with the District Attorney, Mr. Beach, or somebody in his office, that they must agree that Mrs Peckham must be protected in the matter before you would answer any further questions?

A. No sir; I never mentioned it to anybody.

Q. You had no understanding of that kind?

A. I never thought of such a thing.

Q. I was about to ask you in reference to Mr. Brainsbee.
201 Do you remember authorizing Mr. Brainsbee to publish a statement in answer to something that had appeared in the New York World about the 11th of July, 1905? (Exhibiting paper to witness.)

Mr. BAKER: Do not state any of the subject matter of the paper, Mr. Van Riper.

Mr. WORTHINGTON: No I only want him to exercise his privilege of looking at it before I ask him anything about it.

By Mr. WORTHINGTON:

Q. Do you remember authorizing that publication by your attorney?

A. I remember authorizing Mr. Brainsbee to make a request for the publication of that. I do not remember the exact wording of it, but I will say now that it is all true.

Q. Very well. I want to call your attention particularly to this paragraph.

Mr. BAKER: Let us see what it is.

Mr. BEACH: Let us look at it, sir, please.

Mr. WORTHINGTON: Yes; I want to mark it for you. It is this part of it only that I want to call attention to. (Indicating.)

Mr. BAKER: I do not see that the offer in any way contradicts anything that the witness has testified to, and I cannot imagine what it is for; and therefore I object to it on the ground that it does not.

The COURT: I will look at it, if you wish to press the offer. Is it all or only a part of it that you offer?

Mr. WORTHINGTON: Only a part of it, the part that I have marked. I do not care anything about the rest of it. It is all on that subject—the part of it I have marked here (indicating).

(Counsel upon both sides thereupon conferred with the court out of the hearing of the jury.)

Mr. WORTHINGTON: The part of this, gentlemen, which I offer and am permitted to read is this: It is a statement in the New York World of July 11th, 1905——

Mr. BAKER: There is a question of the witness, I believe. You want to ask him, I believe, whether he made that statement? Is that the question?

Mr. WORTHINGTON: He has already said he authorized that statement to be made, and that it is all true.

Mr. BAKER: I beg your pardon, Mr. Worthington: I said I did not remember the exact wording of the statement, but that I say it is true if you want to ask me.

By Mr. WORTHINGTON:

Q. Did you authorize Mr. Brainsbee to make any statement on your behalf in reply to what had happened in the World a day or two before?

A. I authorized him to ask them, the World, to retract certain statements.

The COURT: Suppose you read that clause to him and ask him if he authorized that statement.

By Mr. WORTHINGTON:

Q. Did you authorize Mr. Brainsbee, at the time I have stated, to put this in the World as an answer to something that had appeared in the World a few days before: "I am authorized and requested by my client, Mr. Van Riper, to inform you that he never at any time paid Holmes $80,000 or any other sum for betraying the Government or for any other purpose, and that he never paid any
202 sum to any person whatever in the employ of the United States Government for information of any kind whatsoever?"

A. I will say that I never did.

The COURT: The question is whether you authorized that statement.

By Mr. WORTHINGTON:

Q. The question is whether you authorized Mr. Brainsbee to put that statement in that paper at that time.

A. I do not remember the exact incident, but I suppose I did.

Q. Do you recollect or know whether you took enough interest in these matters to see that when it was in the paper the next day, purporting to be authorized by you through your attorney?

A. I have forgotten about it.

Q. You were living at New York at the time?

A. Yes, sir. I saw so much in the papers at that time that I cannot remember all that they said.

Q. Very well. You have no recollection that you made any complaint to anybody that that was not what you had authorized?

A. No, sir, because it is true.

Q. It is true?

A. Yes sir.

Q. I want to show you now the next letter of Mr. Peckham of August 31st, headed: "10:30 P. M. Letter No. 2." Either my mind is a little obscure, or the letter is. "Party for Price here tonight to make sure of figures tomorrow (Thursday). They are going to sell all they can without breaking market if they can. It *make* break tomorrow." I suppose that is intended for "It may." "Saturday soon as report is out (perhaps before) they cut loose—selling everything." You understood from that that on the following Saturday Price was going to sell cotton; did you?

A. Going to sell on Thursday, this says—"Party for Price here tonight to make sure of figures tomorrow (Thursday). They are going to sell all they can."

Q. "Saturday soon as report is out (perhaps before) they cut loose." What does that mean, then?

A. That they were going to sell all they could.

Q. On Saturday?

A. Well, it meant after the report was out they were going to sell.

Q. What does "Saturday" mean?

A. I don't know. He may have gotten mixed in his days there. He says here——

Q. We will go over the whole of it. "Selling everything in sight. Get in tomorrow early. Be sure to close out Friday as soon as effect of report has been shown. No market Saturday (holiday) and none Monday, so I understand. This is best chance ever will have." Will you explain what he meant by "Saturday soon as report is out (perhaps before) they cut loose"?

A. It is very easy to see that he made a mistake and used the word "Saturday" there instead of "Friday," which he used later. It is very evident on the face of it. The report could not be—

203 he says later, "Close out Friday."

Q. It could not mean then that Price was going to sell out on one day and he wanted you to close out the day before?

A. He says: "Begin selling Thursday; Price begins selling Thursday." He says later: "No market Saturday"; so you can see that he did not mean to do anything Saturday.

Q. Well, that is your explanation?

A. Why, on the face of it you can see that.

Mr. WORTHINGTON: Very well.

Mr. BEACH: Give me the number of that exhibit, please.

Mr. WORTHINGTON: No. 9.

By Mr. WORTHINGTON:

Q. Did Mr. Holmes ever lend you any money to operate the market on at all?

A. No, sir; no, sir.

Q. Did you state to one of the Secret Service men about the time this matter came out that he had?

A. No sir.

Q. Did you talk with any secret service men about the matter?

A. I talked to the secret service men about several matters.

Q. Do you remember Mr. Walsh?

A. But I can straighten you out now; I know what you are driving at. Mr. Holmes loaned Mr. Peckham $15,000, and I went security for it, and put up stock to secure Holmes for Peckham.

Q. When was that?

A. I have got Holmes' receipt here, if you want it, and you can put it in evidence.

Q. When was that?

A. On the 23rd of September.

Q. Let us see the receipt, please. Have you got the paper?

A. Yes, sir; I have several papers here that you can have if you want them, later.

Mr. WORTHINGTON: I appreciate your kindness.

The COURT: It is better not to exchange courtesies during the examination.

The WITNESS: Here it is.

Mr. WORTHINGTON (reading): "Washington, D. C., September 23rd, 1904. Received of L. C. Van Riper, fifty thousand shares of Thunder Mountain Gold & Silver Mining & Milling Company, together with note for $15,000, due six months after date; said stock to be held as collateral and to be returned on payment of note. E. S. Holmes, Jr."

By Mr. WORTHINGTON:

Q. You say that this is Mr. Holmes' handwriting and his signature?

A. Yes, sir.

Q. Now, what was that transaction?

A. Just what it says.

Q. I do not see anything about Mr. Peckham here.

A. Well, I went security, put up this stock to secure the money. Mr. Peckham arranged to borrow the money from Mr. Holmes.

Q. But did Mr. Holmes give you his note for $15,000?

A. No, sir; I gave him my note or Peckham gave him his with my endorsement—I forget how it was fixed.

Q. This says "together with note for $15,000 due six months after date." Did Mr. Holmes give you his note?

A. No; that is his receipt to me.

Mr. BEACH: He loaned Peckham the money.

The WITNESS: Later that note was paid, and the stock returned, and the receipt taken up, or the note taken up.

204 By Mr. WORTHINGTON:

Q. Well, we have not heard anything about the Thunder Mountain Gold & Silver Mining & Milling Company until now.

A. No, sir.

Q. What was your connection with that institution?
A. Only that I paid $50,000 cash for that stock.
Q. To whom did you pay $50,000 for the stock?

Mr. BAKER: I object to going into that, if the Court please.

A. E. H. Dewey.

The COURT: He has answered that. We will not follow into this very far.

By Mr. WORTHINGTON:

Q. Is there any connection between this transaction and these cotton deals that you have been telling us about?
A. None whatever.
Q. They are entirely separate and independent transactions?
A. Yes sir.
Q. Did you have any other transactions with Mr. Holmes that related in any way to gold mines?
A. None except what I have testified to.

Mr. WORTHINGTON: I do not remember any you have testified to.
The COURT: Well, there is testimony about it.

By Mr. WORTHINGTON:

Q. I remember that you referred to the transaction in which you said a paper was shown you which purported to represent a mining transaction which was to account for Mr. Holmes getting some money.
A. Yes, sir; that it all I know about it.
Q. That is the only one?
A. Yes sir.
Q. And that was not a transaction, but purported to represent one that did not exist?
A. Yes sir.

Mr. BEACH: It is on pages 973 and 974, Mr. Worthington.
Mr. WORTHINGTON: I remember that.
Mr. BEACH: I thought you said——
Mr. WORTHINGTON: I did not suppose that would be referred to a transaction with Mr. Holmes about mines, because he says he did not have any.
Mr. BEACH: He said so there.

By Mr. WORTHINGTON:

Q. In the letter, Exhibit 17, which appears to have no date, there is the expression "Also party will be put in for usual ten thousand." Did that refer to ten thousand bales or ten thousand dollars, or what?
A. Ten thousand bales.
Q. I think you said that that meant that Mr. Price would put Mr. Holmes in for ten thousand bales?
A. Yes sir—Mr. Holmes and Mr. Haas, I understood.
Q. Well, Mr. Holmes and Mr. Haas?

A. Or Haas would be put in; I understood Mr. Haas would be put in.

205 Q. And that would represent about five million pounds?

A. Well, there are 500 pounds to a bale.

Q. Had you had any talk with Mr. Holmes or anybody else by which you understood what "the usual ten thousand" meant?

A. Yes, sir.

Q. And what was that?

A. He told me that Mr. Price carried Mr. Haas for ten thousand bales on every report; and as I have already testified, he told me that up until that date he had received $55,000.

Q. $55,000, which he then had in a safe deposit box?

A. Yes, sir; and later, the night that I came down here in October, or just before October, the night I met Holmes in the park with Mr. Peckham, he told us that—no, I am mixed on the date there.

Q. Well, get unmixed, if you can, and let us have it straight.

A. I am not positive when this was; but I think on the next visit here in October. He told me that Haas had met him in the park and had put a package in his pocket and told him to count it after he got home; and when he got home he counted it, and there were forty-nine thousand-dollar bills in the package.

Q. You have not told us about that before.

A. No sir.

Q. Had you forgotten about it?

A. No sir.

Q. Why did you not tell about it on your direct examination?

A. I was not asked about it.

Q. Have you ever told about it before to anybody representing the Government?

A. I think I told Mr. Beach about it.

Q. When?

A. Recently.

Q. Yesterday, did you say, or recently?

A. Recently.

Q. Before you went on the witness stand?

A. Yes sir.

Q. In this same letter there is this expression: "Colonel says he will put up fifty points tomorrow sure." "The Colonel," I understand you, you understood referred to Mr. Holmes?

A. Yes sir.

Q. Why did you understand, or what had taken place between you and Peckham or you and Holmes that will enable you to enlighten us as to what was meant by saying "Colonel says he will put up fifty points tomorrow sure"?

A. Well, I understood that that was the Colonel's guess that the market ought to advance on Price's operations.

Q. You did not understand it to mean that he was going to doctor the returns at all and force a figure?

A. No- at that time, no sir.

Q. I wish you would look at that paper and tell me if you can fix the date of it. That is Exhibit 17.

A. I can fix the date by another letter that is with it there. This is the same letter that was handed to me before, and I cannot tell whether it was received just before or just after that other
206 letter. It was right about the same time; I think just after.

Q. You have spoken about a check for $300 being missing, Mr. Van Riper—part of that $2100 profit in September, I believe. Can you explain *what* it is that that check is not to be found?

A. Yes sir.

Q. Do you know what Bank it was on?

A. On the Second National Bank of Hoboken, New Jersey; and the reason I could not find it was this. This $670 check with Mr. Holmes' endorsement I brought down here when I came before the Grand Jury, and I never thought of the importance of the other two checks until just recently, when Mr. Beach asked me to hunt them up; and this one was the only one I could find of the two. I had sold out the mailing agency, and had moved my office, and had destroyed lots of old worthless stuff there, and I do not know where it is.

Q. In this letter, the accompanying envelope of which is dated or postmarked "September 26th, 1904" Mr. Peckham says to you (this is not signed):

"Long conference Sunday between Colonel and man. S. has done something P. does not like." I think you have explained that "S." means Sully and "P" Price.

A. That was my understanding, yes sir.

Q. "Is going without S knowing it, if possible, to put price up high as possible." What does that mean—"is going without S. knowing it, if possible, to put price up high as possible"?

A. Well, at that time Mr. Sully was issuing bear letters, and Mr. Price was what they call bulling the market; and Peckham had told me that they were in reality working together; that Mr. Price was merely using Mr. Sully as a blind to fool the public, and that this letter would indicate that they had had some kind of a misunderstanding.

Q. This letter is postmarked, as I see, with the date that you began your operations in September. Had this letter anything to do with that?

A. I assume it had.

Q. And that related entirely to transactions or operations between Price and Sully, and not in reference to Mr. Holmes; does it not?

A. Yes, sir.

Q. About that meeting in Chicago which you have told about—was that prearranged between you and any of the other parties you met there?

A. I met Mr. Haas on the train coming to New York just before that, and he told me that Mr. Holmes would be there on this date, and wanted me to come back and be there, too; so I went back, and he was there.

Q. Was anything said about what you were to meet there about?

A. No, sir.

Q. Did the meeting in Chicago have anything to do with anything about these cotton speculations or information?

A. Nothing at all, except just a friendly meeting—just a general talk, a friendly meeting, that was all. We had arranged everything in October, the early part of October.

Q. And there was no further arrangement made in Chicago?

A. No, sir.

Q. Nothing except incidental talk about the matter?

207 A. So far as I recall now.

Q. Did you have any business talk with Mr. Holmes there about anything?

A. No, not specially.

Q. Who were the whole party that were there?

A. What is that?

Q. Who constituted the entire party there?

The COURT: Perhaps we had better stop here.

Mr. BEACH: If your Honor pleases; Before recess, I would like to state that it is agreed with the other side and ourselves that the cross examination of this witness may be suspended after recess in order to take up some New York bankers who have been waiting here for some time to go on, and who will not take much time.

The Court thereupon took a recess until 1:15 o'clock P. M.

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Copied from Stenographer's Minutes, Book 10, Pages 1209 to 1218.

209 LEWIS C. VAN RIPER, the witness whose examination was suspended as heretofore stated, thereupon resumed the witness stand, and his cross examination was continued, as follows:

By Mr. WORTHINGTON:

Q. I was speaking to you, Mr. Van Riper, when we took the recess, who composed the party at Chicago in November, 1904—all the persons you knew who were there?

A. I know a great many people in Chicago.

Q. I mean those who were of this party?

A. Mr. and Mrs. Peckham, Mrs. Tompkins—do you mean the party that went to the World's Fair?

Q. No; I mean the party that were associated together at Chicago.

A. Mr. Haas, Mr. Peckham, Mr. Holmes and myself.

Q. Was Mrs. Peckham in Chicago?

A. Yes sir.

Q. While you were in Chicago on that occasion did you have any business to transact with reference to mines with anybody, or mining interests or business?

A. I don't recall that I did.

Q. Do you remember going to the Hyde Park Hotel, and Mr.

Holmes going with you, and seeing some men there in reference to some mining business?

A. Yes, I do remember that.

Q. You remember that?

A. Yes sir.

Q. Mr. E. T. Staples?

A. Yes sir.

Q. And a Mr. Ament?

A. I have forgotten his name; I remember Mr. Staples.

Q. When you went to Chicago you had not expected to see those men?

A. No sir.

Q. That was something that came up after you were there?

A. Yes sir.

Q. Did Mr. Holmes have anything to do with it?

A. No sir.

Q. He went with you to see these men; did he not?

A. Yes sir.

Q. And they had some samples of gold from the mines?

A. Yes sir.

Q. Which purported to be from the mines?

A. Yes sir.

Q. Now, the World's Fair party—who composed that? I mean the World's Fair party at St. Louis a little later on. (To counsel for the Government.) Have you got that hotel register here Mr. Baker?

Mr. ADKINS. Yes sir; I think that is it. (Handing book to Mr. Worthington.)

By Mr. WORTHINGTON:

210 Q. I think Mr. Baker or Mr. Beach showed you this?

A. Yes, sir.

Q. Were Mr. and Mrs. Peckham of that party?

A. Yes sir.

Q. And you?

A. Yes sir.

Q. And Mr. Haas?

A. Mr. Holmes and Mr. L. C. Holmes and Mrs. Tompkins.

Q. How about a Mrs. Tompkins?

A. Yes sir.

Q. I think you were asked if you could identify the handwriting of these entries in the book?

A. Yes sir.

Q. What do you say as to the name "Mr. and Mrs. F. A. Peckham, N. Y.?" Do you recognize the handwriting?

A. Well, first I did not, because it was evidently written with a very poor pen; but I think those are my own handwriting.

Q. The name "Mr. and Mrs. F. A. Peckham?"

A. These three signatures.

Q. And "L. C. Van Ruper" and "M. Haas?"

A. Yes sir.

Q. How about the "Mrs. M. F. Tompkins?"

A. I do not think that is in my handwriting.

Q. Do you recognize the handwriting of anybody whose handwriting you are acquainted with?

A. It looks like Mr. Holmes'.

Q. And the names on the other page, of Mr. Holmes and L. L. Holmes, are in his handwriting, I think you said?

A. I think so.

Q. Have you ever noticed a similarity between your handwriting and that of Mr. Holmes?

A No sir.

Q. I would like to understand a little more clearly than I do now, Mr. Van Riper, what was your information as to the control that Mr. Holmes had and exercised over Mr. Hyde when he was there about these reports. I think you have said at one time that you were informed that Mr. Holmes could control Mr. Hyde in those matters?

A. Yes sir; Mr. Holmes told me that he made up the reports himself, and Mr. Hyde always took his recommendations.

Q. Did you have any information different from that during the time you were connected with these operations?

A. No sir.

Q. Who was it told you, then, that Mr. Holmes had arranged that if he did not get Mr. Hyde to do what he wanted to, as I understand, that he would do something with the window Blind to indicate?

A. I heard Mr. Holmes make the plan to Mr. Peckham, and saw him draw a diagram showing the position of the curtain in his own handwriting—what the different positions of the curtain meant.

Q. What I am trying to get at is whether there was any explanation of what was necessary, if Mr. Hyde always did what he wanted him to do?

A. It was not necessary; it was merely a precautionary measure.

211 Q. Just in case Mr. Hyde should do something he had never done before?

A. Yes sir.

Q. Where was it that that interview about the window-blind business took place?

A. It took place in the park back of the White House.

Q. And when?

A. One Sunday just before the October cotton report.

Q. Early in October then?

A. It was the Sunday before the October report; it was made specially for that report.

Q. That report was made, we see here, on the 3rd of October. Was it on the 1st or 2nd of October?

A. It was the Sunday before the 3rd.

Q. The Sunday before the 3rd of October, 1904?

A. Yes sir.

Q. And what time in the day?

A. I could not say positively. It was, I think, though, in the afternoon.

Q. You do not remember whether you went back to New York or remained here that day?

A. I think I went back that night.

Q. You cannot tell how long it was before you went back that this happened?

A. You mean that day?

Q. I want to know at what hour of the day it was that you say this talk about arranging the curtain as a signal took place at the White House lot?

A. I cannot tell the hour of day; I remember the circumstances perfectly.

Q. Well, I will drop that if you say you cannot approximate the time of day at all, Mr. Van Riper.

A. No; I do not remember the time of day that this occurred.

Q. How long were you here on that trip; how many days?

A. I think I came down on Saturday and went back Sunday night.

Q. Where did you stop?

A. I think I stopped at the Willard.

Q. Is it possible that that could have been just the day before the report?

A. It may possibly be.

Q. What do you say?

A. It may be possible.

Q. Was anything said about Mr. Hyde having given any indications of not following the will of Mr. Holmes about the report?

A. No sir.

Q. Did Mr. Holmes tell you how long he had been dictating to Mr. Hyde what he should put in these reports?

A. I do not think the time was mentioned. He just made a statement that Mr. Hyde always took his recommendations.

Q. I think you have said that you understood all the time that there was nothing wrong in anything that was going on about this matter so far as you knew?

A. I don't know as I said it that way?

Q. Well, was it a fact or not?

A. I said I didn't think I was doing any wrong.

Q. You heard this arrangement that was made, you say,
212 about the window shade?

A. Yes sir.

Q. And you knew that was to enable Mr. Peckham to communicate with you?

A. Yes sir.

Q. So that you could make the deals and divide the money with Mr. Peckham and Mr. Haas?

A. Mr. Haas was not in the deal at that time.

Q. Well, with Mr. Peckham then?

A. Yes sir.

Q. And you did not think, to your mind, there was anything wrong about that on your part?

A. Well, when a man is speculating he will get information the best way he can.

Q. And there is nothing wrong in his getting it from an official whose duty it is not to give it to him? That is your idea about it, is it?

A. Well, I don't know.

Q. Do you know anybody who does?

A. I don't know as I would want to say now.

Q. You would not want to say just now?

A. I say, I don't know as I would be competent to say at this time.

Q. I have understood you to say you do not think you were doing anything that was wrong?

A. I did not.

Q. I want to get at your idea of moral principles?

A. At that time I did not think I was.

Q. Did you come down here again about the middle of October 1904?

A. I came down, I think, just before the middle of October.

Q. Where did you stop then?

A. I stopped at the Willard.

Q. About how long were you here on that occasion?

A. That was the occasion I have already testified, to that he brought Mr. Haas to my room. I don't recall how long I was here.

Q. Do you remember being in Washington when Mr. Holmes was out of town that fall?

A. I don't remember what occasion you refer to. I was here several times.

Q. Did you not bring your children with you—come down here and bring your children with you while Mr. Holmes was out of Washington?

A. I don't remember whether Mr. Holmes was here or not when I had them here. I brought them down on one occasion.

Q. That fall?

A. Yes sir.

Q. Where did you stop when you had your children with you?

A. I stopped at the Willard.

Q. How long?

A. My recollection is that they were here—they came down
213 on Saturday and we went back Sunday night.

Q. And what was the object of that trip?

A. I could not say now. I know I came down to see Mr. Peckham.

Q. You say you did come or you may have come to see Mr. Peckham?

A. Yes sir, I came to see Mr. Peckham, yes.

Q. At the time you brought your children with you?

A. Yes sir.

Q. And did you see him?

A. Yes sir.

Q. Was he stopping here in Washington at that time?

A. Yes sir.

Q. At the Willard?

A. Yes sir.

Q. Did you have any business with him at that time in reference to that cotton crop business?

A. I had quite a good deal of business with him.

Q. I am speaking of the time, or trying to speak of the time, when Mr. Holmes was not here.

A. Well, I am not sure whether Mr. Holmes was here on that trip or not.

Q. Did you see him?

A. I don't recall whether I did or not.

Q. On this trip to St. Louis was there any object connected with what we are investigating here in the meeting there?

A. No sir.

Q. Or was it simply to go to the World's Fair?

A. Just simply a trip to the World's Fair.

Mr. WORTHINGTON: Have you got the dates of the arrival of these parties at Chicago in November? I have forgotten them, and I do not want to take the time to hunt them up if you have got them.

Mr. ADKINS: I think they were there from October 27th to November 1st. (After examining books) One of them is October 27th.

Mr. WORTHINGTON: Which is October 27th.

Mr. ADKINS: M. Haas, Chicago, at the Auditorium.

By Mr. WORTHINGTON:

Q. While they are looking for that Mr. Van Riper, I would like to ask you a little more particularly about your business in New York.

Mr. ADKINS: I have that date now, Mr. Worthington—November 2nd, E. S. Holmes and L. L. Holmes.

Mr. WORTHINGTON: Have you the time Mr. Van Riper registered there?

Mr. ADKINS: I have not that.

Mr. WORTHINGTON: What is the date that Holmes registered?

Mr. ADKINS: November 2nd.

Mr. WORTHINGTON: Now I want to find when Mr. Van Riper registered there.

Mr. ADKINS: I have not that.

By Mr. WORTHINGTON:

Q. Can you tell the date you arrived at Chicago on that occasion?

214 A. I think I arrived the morning we left for St. Louis. We left for St. Louis that night.

Q. You were there then with them only a part of a day?

A. Yes sir.

Mr. WORTHINGTON: I want to go to another subject now, your Honor. I have not very much more to ask him.

(Counsel on both sides thereupon conferred with the court out of the hearing of the jury.)

(The Court thereupon adjourned until tomorrow, Thursday, June 20th, 1907, at ten o'clock A. M.)

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Copied from Stenographer's Minutes, Book 11, Pages 1237 to 1257.

216 (Book 11, Page 1237.)

L. C. VAN RIPER resumed the stand for further cross-examination.

By Mr. WORTHINGTON:

Q. I was about to ask you, when we adjourned yesterday, about your business since you have been in New York. Do you know Mr. C. W. Morgan?

A. Yes sir.

Q. How long ago did you become acquainted with him?

A. I have known him as far back as 1898, I think, or early in 1899.

Q. Was he in business there under the name of C. W. Morgan & Company.

A. Yes sir.

Q. For how long?

A. I don't know how long he was in business. He was there a long time before I knew him.

Q. What business did he carry on?

A. The brokerage business.

Q. Where?

A. At No. 70 Broadway.

Q. Did you have any business relation with him except as a customer?

A. I traded in stocks with him.

Q. Did you send out circulars to a great many people of this character:

Lewis C. Van Riper, Investment Broker, 11 Broadway, New York.

FEBRUARY 6TH, 1900.

Mr. Henry Johnson, Rahway, N. J.

DEAR SIR: Replying to yours of recent date, am mailing you today my latest edition of "Ins and Outs of Wall Street," receipt of which kindly acknowledge. If you will note carefully my method of operating as explained on page 73 and in accordance with same open an account under my management with some good exchange house here, preferably C. W. Morgan & Co., 71 Broadway, or Mitchell & Co., 60 Broadway, I am positive we can secure big results in our present markets as they were never in better shape for profitable trading and practically guarantee handsome returns on capital properly invested. As I have facilities for handling a number of additional accounts I would be very glad to have yours.

Hoping to hear from you by return mail, I am,

Yours very truly, LEWIS C. VAN RIPER.

217 Mr. BAKER: I object to that on the ground that it is immaterial.

The COURT: I do not see how it is material.

Mr. WORTHINGTON: Is it not material to arrive at the character of the business in which this witness has been engaged, for the purpose of throwing light on his credibility. It has not been very long since the District Attorney went into the proceedings of a witness I put on the stand covering practically the period of his whole life.

The COURT: I think you have been allowed full latitude on that subject. I do not see how any answer to this could help the jury.

Mr. WORTHINGTON: I would like to make a prof-er of what I expect to show on this subject.

The COURT: You may come to the bench and make it.

Mr. WORTHINGTON: I offer to show that he sent out thousands of circulars of this kind to various people.

Mr. BEACH: What is the date of that?

Mr. WORTHINGTON: I have not asked him about the date.

The COURT: Then it will be taken as against you, unless you make it more specific.

Mr. BAKER: You say you are not offering the date?

Mr. WORTHINGTON: I say it was as late as 1900. I offer to show that he sent out thousands of circulars to people of this kind to induce them to send money to Morgan & Company, he being in secret association with Morgan & Company to practically swindle the people who sent their money to Morgan & Company, by pretending to have investments when none were in fact made. In other words that he was engaged in a swindling business.

The COURT: How is it expected to prove that there was a swindle.

Mr. WORTHINGTON: By his getting people to send money to Morgan & Company on the supposition they were going to be invested in stock speculations, when, as a matter of fact, it was not invested at all.

Mr. BAKER: Are you going to prove that he had knowledge of that fact?

Mr. WORTHINGTON: That is my information. I expect to prove also that Morgan & Company failed for millions of dollars, to these dupes; that Morgan was arrested and the New York Sun thereupon published an account denouncing him as a scoundrel on account of these transactions; that he brought suit against the Sun for libel and the Sun defended on the ground that he was a swindler; that issue was joined, there was a trial and the jury adjudicated that he was a swindler, and decided in favor of the defendant.

Mr. BAKER: To all of which we object.

The COURT: I think the latter part of it about the Sun publication and the suit for libel and the verdict would not be admissible. If you want to show, if you can get him to admit that he was engaged in swindling operations, I will let you try to do that.

218 Mr. WORTHINGTON: That is my information.

The COURT: You may ask him about that but not about the failure of Morgan & Company nor the publication in the Sun.

Mr. WORTHINGTON: Then, while we are here, I will offer sepa-

rately to cross examine him and prove by him the publication in the Sun denouncing him as a swindler; and subsequent proceedings up to the verdict of the jury.

The COURT: That may be excluded.

Mr. WORTHINGTON: I will have a separate exception to that.

The COURT: We will see what you get out of him about the swindling business; but at this time that is excluded.

By Mr. WORTHINGTON:

Q. I will ask you whether, about the year 1900 you did not send out thousands of circulars similar to the one I have just read?

Mr. BAKER: I object.

The COURT: You may answer that.

A. I wouldn't say that I sent out thousands; no sir.

Q. Did you send out hundreds?

A. I wouldn't say that they were of the same character as that.

Q. Why? Because you don't recollect?

A. I don't recollect. I do say that I was operating accounts with a dozen different brokers or speculators for people who wanted to speculate; but in every case they were members of either the consolidated exchange or the New York Stock Exchange.

Q. Did you send out circulars of this general character in which you suggested that the parties to whom you sent the circulars should deal with C. W. Morgan preferably?

A. I don't remember that I did. I generally told them to send it to any responsible broker, and I would manage the accounts.

Q. Do you say that you did not send out circulars in which you used the expression, substantially, "preferably C. W. Morgan & Company, 71 Broadway; or Mitchell & Company, No. 60 Broadway"?

A. I don't remember that I ever sent that out.

Q. Will you say that you did not?

A. I don't say I did not. I say I don't remember. That was seven or eight years ago.

Q. I am asking you now in reference to 1900.

A. That was seven years ago.

Q. Did you not have extensive dealings of that kind with persons who sent their money to C. W. Morgan on your suggestion?

A. Yes, and several other New York Stock Exchange Houses at the same time. I would be glad to give you the names of them if you wish them.

Q. Did you not destroy or mutilate the books which you kept showing the transactions with these people?

A. I never did anything of the kind.

Q. In the year 1900?

A. No sir.

Q. While you were in Chicago, did you do business on
219 what is called the pyramid plan of stock speculating?

A. I don't remember.

Q. You don't remember?

A. No sir.

Q. After you went to New York did you operate under what is called the chart system?

A. I have always been a believer in charts, after I came to New York and I believe in them still.

Q. Are you sending out circulars about the chart system?

A. Yes sir.

Q. Did you send out circulars about the chart system?

A. Yes sir.

Q. What is the chart system?

A. It is a method of keeping a record of past fluctuations in the market.

Q. When did you begin to send out these circulars?

A. I think in 1898.

Q. Your memory is more distinct about that than about what you sent out in 1900?

A. I remember the chart, certainly, because I wrote a book relating to it, and they are used up to this day.

Q. Were you connected at any time with what is called the Beaumont Trust Company?

A. No sir.

Q. Do you know of the company?

A. I have heard of it.

Q. Do you know John C. Moore?

A. Yes sir.

Q. Did you ever have any relations with him of any kind?

A. I have had some business dealings with him.

Q. When?

A. I sold him a house in Weehawken, New Jersey, about 1899 or 1900; somewhere around there.

Q. Was that all the business dealings you had with him?

A. That was substantially all.

Q. Substantially all?

A. Yes sir.

Q. Then it was not all.

A. It was all that I recall.

Q. Are you acquainted with an organization or New York corporation called the Princess Club?

A. Am I acquainted with it?

Q. Do you have anything to do with it?

A. No sir.

Q. You never had anything to do with it?

A. I never had anything to do with it. I want to qualify that in this way, that I did guarantee a lease for a man by the name of McKenzie, who organized the Princess Club. I stood good for the lease, and I am on the guarantee still for the building that they opened these dining rooms in. He was a personal friend of mine, and he came to me and asked me to guarantee this lease, and
220 I did it.

Q. Is that a stock corporation?

A. I think it was.

Q. Did you have any stock?

A. No sir.

Q. You never had.

A. I don't recall that I ever had. I did make a loan on some stock once.

Q. Where — the rooms of the Princess Club?

The COURT: I do not think that is material, so far as I am advised.

The WITNESS: If there is no objection, I would prefer to answer.

The COURT: I do not think we will take up time further with this matter.

Mr. WORTHINGTON: Of course it is impossible for anybody to say whether time is taken up needlessly without knowing what information the cross examiner has.

The COURT: The cross examiner will have to disclose sufficient information to the court so that the court can see that there is some importance to it, without spending any more time upon it.

Mr. WORTHINGTON: My information is that he was a stockholder in that company. What I am trying to show is this man's relation with Mr. Peckham, and that the feeling that existed between him and Mr. Peckham at the time that he went and made these charges grew out of the fact that he had broken up Peckham's home and taken his wife from him. My information is that Mrs. Peckham was connected with him in relation to this Princess Club.

Mr. BAKER: He has answered, and said that he had nothing to do with it.

The COURT: It is a good ways around, without knowing whether you are coming to anything.

Mr. BAKER: Do you say that you wish to show illicit relations between this man and Mrs. Peckham?

Mr. WORTHINGTON: Yes.

Mr. BAKER: Then why don't you ask him the direct question?

The COURT: I do not think it is proper to get ideas into the minds of the jury by a long series of questions, from which they may infer that there must be something to it or else the examiner would not be asking them, when there is no reason to feel that you have any expectation of his admitting them.

Mr. WORTHINGTON: I do not expect he will admit it if I ask him the direct question.

The COURT: That is the only thing that is admissible.

Mr. WORTHINGTON: It would be practically killing a cross examination if you had to tell the witness every time what you are after.

The COURT: But you are undertaking to lead up to a long series of questions, without expecting that, in the end, he will admit the only thing that will affect his credibility.

Mr. WORTHINGTON: He may answer the question so as to
221 show that the thing is true, although he denies it.

The COURT: I do not see how that could be in a matter like this with reference to illicit relations. I do not think that you ought to take time to go into a long series of questions from which you would ask the jury to infer there were such relations.

Mr. WORTHINGTON: Very well.

By Mr. WORTHINGTON:

Q. In the latter part of 1900, were you president of a company called the De Faye Company?

A. Yes sir; in the early part of 1904 and the latter part too, and I am still president of it.

Q. Is that located at 416 Broadway?

A. Yes sir.

Q. You say you were connected with it in the early part of 1904, and have been down to the present time?

A. Yes sir.

Q. Was that *connected* at any time by a person by the name of Madame De Faye?

A. No sir.

Q. No such person had anything to do with it?

Mr. BAKER: I object to that.

The COURT: That may be excluded.

By Mr. WORTHINGTON:

Q. Did Mrs. Peckham, the wife of the Mr. Peckham we are talking about, have anything to do with that company?

Mr. BAKER: I object to that.

The COURT: You may answer that.

A. No sir.

By Mr. WORTHINGTON:

Q. She was not concerned with it in any way?

A. She was not connected with it.

Q. Did she stay at the rooms of it?

Mr. BAKER: I object.

The COURT: You may answer that.

A. No sir, she never stayed at the rooms.

By Mr. WORTHINGTON:

Q. Did she visit them?

A. Yes sir, occasionally.

Q. Down to what time did she continue to visit them?

A. She was only there a few times after the firm was organized.

Q. I asked you down to what time?

A. I couldn't state positively; but I don't think she was ever in the place after the first of June, 1904.

Q. When did you first tell anybody about the conversation that you say took place with Mr. Holmes with reference to giving signals by the movement of the window shade?

A. I think I first told it to you on cross examination.

Q. You had never mentioned that to anybody until that time?

A. I don't think I ever did. I don't recall that I ever did.

222 Q. I think you said, and I want you to correct me if I am wrong, that in the latter part of December Mr. Holmes was sick at the Breslin Hotel in New York, and was in bed?

A. Yes, sir.

Q. You paid certain money in cash, I think you said, to either Mr. Peckham or Mr. Haas; which was it?

A. I think it was to Mr. Haas. Yes sir, it was to Mr. Haas, because Mr. Peckham brought up some small bills, and I took up $10,000. Mr. Peckham brought up $1200 and we made the change in that way, and gave the money to Mr. Haas. Mr. Peckham then charged himself with the small item, to make the money even and Haas was handed $10,800, which he gave to Mr. Holmes.

Q. Then Mr. Holmes put it under his pillow?

A. Yes sir.

Q. Then Mr. Holmes said in substance, "Freddie, we must draw down our share of that $75,000?"

A. Yes sir.

Q. And still you do not think you were doing anything wrong?

Mr. BEACH: If your Honor please, that question has been asked a score of times.

Mr. WORTHINGTON: I think it is exceedingly pertinent. What could be more important for the jury to know, in passing upon the credibility of this witness, than to know whether it is true or not that he did not know that he was doing anything wrong, or did not think he was doing anything wrong?

The COURT: You may ask him that.

Q. You understood that Mr. Holmes was getting that as his reward for giving out information from the Bureau of Statistics?

A. I was not told that at all.

Q. Did you understand that?

A. No sir; I didn't know but what Mr. Holmes might have loaned Mr. Haas the money.

Q. And when he said, "Freddie, we must draw down our share of the $75,000," you thought he might be asking for the payment of a debt?

A. I didn't know what he owed. I only knew Mr. Haas in the matter. I didn't owe Mr. Holmes any of that $75,000.

Q. And you did not, in your own mind, understand that he was receiving that money for betraying his trust down here?

A. No sir; I didn't know anything about it.

Q. You said *the* the firm of Peckham, Mercer & Company was formed so that you could conveniently carry out these operations that you had arranged to go into with Haas, Peckham and Mr. Holmes?

A. That was one of the reasons, and the other reason was to benefit by the commissions which were a substantial item on large transactions.

Q. You understood that, as the papers were originally drawn, Mr. Holmes was to have a share in the profits?

223 A. I didn't know anything about that, except that I saw Mr. Haas give Mr. Holmes this trust agreement.

Q. You saw Haas give Mr. Holmes the agreement which you read, did you not?

A. I had read it; yes sir.

Q. You witnessed it yourself, did you not?
A. Yes sir, but there was not anything said about what it was for.
Q. Didn't you read it or hear it read?
A. Yes sir.
Q. And didn't you know that it declared that Mr. Holmes was entitled to one half of Mr. Haas' profits in the concern?
A. Not at the time I witnessed it. His name was not in it. Holmes wrote his name in after Haas handed me the paper, and after it was witnessed.
Q. He wrote it in in your presence?
A. Yes sir.
Q. So that you knew the agreement was that Holmes was to get a share of the profits?
A. Yes sir.
Q. What was your understanding that he was to get a share of the profits for?
A. I didn't know but what he had put up money with Haas.
Q. So far as you knew that was an honest transaction?
A. It certainly was an honest transaction all the way through.
Q. Where were these papers drawn up, who had them prepared and typewritten?
A. I don't recall, but I think Mr. Peckham brought them up.
Q. Was it not done in your office and under your direction?
A. I don't remember but I don't think so.
Q. I show you now exhibit No. 35-D, which is one of the memoranda you have identified. I think you said that "December 30th" and "Col." were not written at the same time as the rest of the paper?
A. No sir.
Q. When were those entries put on there?
A. I don't think they were put on until the next June.
Q. You mean about the time you came down here to see the Secretary?
A. Yes sir.
Q. You put on there "Col."
A. Yes sir.
Q. What does "Col." mean?
A. The amount that Haas paid Holmes. I put it on there just for a memorandum of my own.
Q. It indicated that that was the Colonel's share?
A. That is what I saw Haas pay Holmes on December 5.

224 Redirect examination.

By Mr. Beach:

Q. Just a question or two, Mr. Van Riper, on one or two points that my friend Mr. Worthington has brought out. On page 212, in volume 2½, Mr. Worthington asked you this:
"Q. Who was it, told you then that Mr. Holmes had arranged that if he did not get Mr. Hyde to do what he wanted to, as I understand, that he would do something with the window blind to indicate?"
You answered:

"A. I heard Mr. Holmes make the plan to Mr. Peckham and saw him draw a diagram showing the position of the curtain in his own handwriting—what the different positions of the curtain meant."

That was the question and that was your answer. I will ask you to tell us what use was to be made of the curtain, and what the positions were?

A. If the curtain was half way down, that is at the parting of the two shades, it meant that the report was as he expected. If it was half way up on the upper sash, it meant that something had gone wrong and to get out. If it was half way down on the lower sash, it meant that it was even better than he had planned.

Q. At page 1211, Mr. Worthington asks you:

"Q. Have you ever noticed a similarity between your handwriting and that of Mr. Holmes."

Your answer was:

"A. No sir."

At page 1159, Mr. Worthington, in asking you about this receipt, asked this question:

"You say that this is Mr. Holmes' handwriting and his signature?"

To which you answered:

"Yes sir."

Mr. WORTHINGTON: I remember that very well Mr. Beach.

A. I did not understand the question that way, Mr. Beach. I understood him to ask me if it was Mr. Holmes' signature.

By Mr. BEACH:

Q. I did not either; until I saw it in the record.

A. I answered that before I looked at this; but I remember that the body was in my handwriting, and Mr. Holmes signed it.

Q. Did Mr. Holmes say where he got the $15,000?

A. Yes sir.

Q. I mean where he got it?

A. Yes sir.

Q. Where?

A. From Mr. Haas through Price, or rather from Price through Haas.

225 Recross-examination.

By Mr. WORTHINGTON:

Q. Have you had your attention called to this matter of the handwriting of the receipt of September 23rd, 1901 since you left the stand on yesterday?

A. No sir, not except what you heard here.

Q. You say your attention was not called to it until just now?

A. No sir.

Q. You did not know, until now, that you were reported to have said that the Holmes paper was in Mr. Holmes' handwriting?

A. I misunderstood the question, if I answered it in that way. I understood you to ask me if that was Mr. Holmes' signature.

Q. That does not answer the question I asked?

A. No; I have never had my attention called to it except what you heard right here.

Q. You did not know then, until now, that you are reported to have said that the whole paper was in his handwriting?

A. No sir.

Mr. BEACH: If your Honor please, we will offer this receipt in evidence.

The COURT: I think it was read.

Mr. BEACH: I want to have it marked as an exhibit and filed.

Said receipt is marked Exhibit 246, and is in the words and figures, following, to wit:

"The New Willard," Pennsylvania Avenue, Fourteenth and F Streets.

F. S. Hight, Manager.

WASHINGTON, D. C., *Sept.* 23, 1904.

Received of L. C. Van Riper, 50,000,000 shares of Thunder Mountain Gold and Silver Mining and Milling Co. together with note for $15,000 due six months after date, said stock to be held as collateral and to be returned on payment of note.

E. S. HOLMES, JR."

226 United States Circuit Court, Southern District of New York.

In the Matter of the Application of MOSES HAAS for a Writ of Habeas Corpus.

Return to Writ of Habeas Corpus.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William Henkel, being duly sworn, says:

That he is United States Marshal for the Southern District of New York.

That upon the 30th day of November, 1908, the writ of habeas corpus to which this return is annexed was served upon him directing him to have the body of one Moses Haas by him imprisoned and detained at a Stated Term of the Circuit Court of the United States for the Southern District of New York on the 14th day of December, 1908, at 11 A. M., together with the time and cause of such imprisonment and detention together with the said writ of habeas corpus.

227 Your deponent further certifies that on the service of said writ and in obedience to an order of the Honorable George C. Holt, District Judge, endorsed thereon said Moses Haas was placed in the custody of his counsel to give bail during the pendency of said writ.

Your deponent further certifies and says that at the time of service of said writ said Moses Haas was in his custody under and by virtue of two warrants of commit/ment each dated the 30th day of November, 1908, and signed by John A. Shields, Esq., a United States Commissioner in and for the Southern District of New York, which said commit/ments each commanded this deponent as the United States Marshal aforesaid in the name and by the authority of the United States of America to take the said defendant into his custody and him safely keep until he should be ordered by the District Judge to be removed to the District of Columbia for trial or should be discharged according to law. That by virtue of said commit/ments hereinbefore mentioned this deponent took said Moses Haas into his custody upon said 30th day of June, 1908, and detained him in his custody until the service of said writ with the order of Honorable George C. Holt endorsed thereon. Deponent refers to the original warrants of commit/ment and endorsements thereon now in his possession which he hereby makes a part of this return, copies
228 of which are hereto annexed and marked Exhibits A and B.

Sworn to before me this 4th day of December, 1908.

(Sd.) WILLIAM HENKEL,
U. S. Marshal.

[SEAL.] (Sd.) JOHN A. SHIELDS,
U. S. Comm'r.

229 Annexed to the Marshal's return are copies of the following papers, viz:

Commitment.
Affidavit of G. H. Dorr, filed June 24, 1908.
Exhibit A, Copy of Washington indictment No. 26,088.
Exhibit B, Copy of Washington indictment, No. 26,089.
Warrant (Haas and Peckham).
Commitment.
Affidavit of G. H. Dorr, filed June 24, 1908.
Exhibit A, Washington indictment, No. 26,086.
Exhibit B, 26,087, Washington indictment.
Warrant (Haas and Price).

All of which are printed in full in the return to the writ of certiorari.

230 United States Circuit Court, Southern District of New York

MOSES HAAS, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and JOHN A. SHIELDS, United States Commissioner for the Southern District of New York, Respondents.

Traverse and Answer to Return of Marshal.

Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y.
Max D. Steuer, 115 Broadway, New York City, Attorneys for Petitioner.
U. S. Circuit Court, Southern District of N. Y., Filed Dec. 4, 1908, John A. Shields, Clerk.

231 In the Circuit Court of the United States for the Southern District of New York.

MOSES HAAS, Petitioner,

vs.

WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York, Respondents.

The defendant Moses Haas for traverse and answer to the return of William Henkel, United States Marshal in and for the Southern District of New York to the writ of habeas corpus issued to him in the above-entitled matter, doth hereby allege as follows:

First. Said commitment under and by virtue of which said Marshal returns that he is holding, restraining and depriving petitioner of his liberty is illegal and void for the following reasons:

(1.) Said Commissioner who issued said Warrant to said Marshal was without jurisdiction to commit the defendant for removal to the District of Columbia—for the reason that said defendant was
232 under indictment in the Southern District of New York for precisely the same offenses charged against him by certain indictments found in the District of Columbia. Said defendant had been apprehended upon said New York indictments and admitted to bail; had demurred to the sufficiency of the indictments and such demurrers had been overruled. He was therefore legally in custody in the Southern District of New York, awaiting trial for precisely the same offenses for which removal is now sought to the District of Columbia.

(2.) The alleged crimes set forth in the certain indictments so found in the District of Columbia were and are barred by the Statute of Limitations.

(3.) The said indictments do not charge the defendant with the commission of a statutory crime or offense, and there was therefore an entire absence of probable cause before the Commissioner.

Second. The said indictments relating to Section 5451 of the Revised Statutes of the United States do not sufficiently charge the violation of that Section.

Third. The alleged crime of conspiracy to bribe attempted to be set forth in the indictments resulting in said warrant upon which defendant is held merge in the completed offense.

Fourth. The proceedings before said Commissioner result-
233 ing in the issuance of said warrant did not confer jurisdiction upon said Commissioner to commit the defendant for removal for the additional reason that the complaints upon which proceedings were instituted before said Commissioner were all upon information and belief, and not upon the positive knowledge of the affiant.

Fifth. The defendant is deprived of his liberty without due process of law and contrary to the provisions of the Constitution of the United States; said Commissioner was wholly without jurisdiction to issue said warrants, and said Marshal is acting under illegal war-

rants in attempting to hold and detain said defendant and deprive him of his liberty as aforesaid.

Wherefore, The defendant Moses Haas demands that he be discharged in accordance with the prayer of his petition to the United States Circuit Court for the Southern District of New York for writs of habeas corpus and certiorari herein.

(Sd.) MOSES HAAS, *Defendant.*

COUNTY OF NEW YORK, *ss:*

Moses Haas being duly sworn says that he is the defendant
234 above named; that he has read the foregoing traverse and answer to the return of the Marshal herein, and that the same is true as he verily believes.

(Sd.) MOSES HAAS.

Subscribed and sworn to before me, this 4th day of December, A. D., 1908.

[SEAL.] (Sd.) JOHN A. SHIELDS,
U. S. Comm'r.

235 The President of the United States of America to John A. Shields, United States Commissioner in and for the Southern District of New York, Greeting:

We command you that you certify fully and at large to the United States Circuit Court in and for the Southern District of New York to be held in the Post Office Building in the City of New York, County of New York and State of New York, on the 4th day of December, 1908, at 11 o'clock in the forenoon of that day, the cause of the imprisonment of Moses Haas, by you detained, as it is said, by whatsoever name the said Moses Haas shall be called or charged; and that you certify fully and at large the cause of the imprisonment of the said Moses Haas and true copies of the proceedings, complaint, warrant, depositions, examinations, determinations, documentary evidence, commitments and record had before you in the matter of the United States against Moses Haas upon a charge of the violation of the laws of the United States, and have you then and there this Writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States of America, the 30th day of November, 1908.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

236 Allowed this 30th day of November, 1908.

GEO. C. HOLT, *J.*

NASH ROCKWOOD,
378 *Broadway, Saratoga Springs, N. Y.,*
MAX D. STEUER,
115 *Broadway, New York City,*
Attorneys for Petitioner, Moses Haas.

237 UNITED STATES
vs.
MOSES HAAS.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, United States Commissioner for the Southern District of New York, in obedience to the foregoing Writ of Certiorari, do hereby certify, that the papers hereunto annexed and returned herewith constitute the record and proceedings had before me in the above entitled cause.

Dated, New York, December 2, 1908.

JOHN A. SHIELDS,
U. S. Commissioner, Southern District of New York.

238 The accused Moses Haas named in the annexed warrant having been arrested and brought before me on the said warrant, and the charges on the warrant and complaint contained having been duly explained to the said accused, and he being duly cautioned and informed of his rights in the matter, having said that he demanded an examination and said examination having been had and it appearing to me from the testimony submitted that there is probable cause to believe the said Moses Haas guilty of the offense charged in the annexed warrant and complaint contained, he is hereby committed for trial at the District of Columbia, being the District in which the offense charged is alleged to have been committed. And the said Moses Haas is hereby committed to the custody of the United States Marshal for the Southern District of New York until a warrant for his removal shall issue by the U. S. District Judge or he shall be otherwise dealt with according to law.

New York, November 30th, 1908.

(Signed) JOHN A. SHIELDS,
U. S. Commissioner.

To Wm. Henkel, U. S. Marshal.

239 UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

Warrant to Apprehend.

Henry L. Stimson, U. S. Att'y.

I hereby depute Mr. Reed and Mr. Aukner to execute the within writ.

June 24th, 1908.

WM. HENKEL,
U. S. Marshall.

12213.

(Endorsed as follows.)

I received this warrant on the 24th day of June, 1908, at New York City and executed the same by arresting the within named Moses Haas and Frederick A. Peckham, at New York City on the 24th day of June, 1908, and have their bodies now in court, as within I am commanded.

WM. HENKEL,
U. S. Marshal.

The within named accused, Frederick Haas, being arrested
240 and brought before me on the within warrant and the charge herein contained being duly explained to said accused and he being duly cautious and informed of his right in the matter, says that he demands an examination and the said accused Frederick A. Peckham is hereby committed to the custody of the U. S. Marshal for the Southern District of New York to be brought before me for examination on the 17th day of July, 1908 at 2 P. M.

New York, June 24th.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

To William Henkel, Esq., U. S. Marshal.

The within named accused, Moses Haas, being arrested and brought before me on the within warrant and the charge herein contained being duly explained to said accused, and he being duly cautioned and informed of his rights says that he demands an examination and the said accused Moses Haas, is hereby committed to the custody of the U. S. Marshal for the Southern District of New York to be brought before me for examination on the 17th day of July, 1908, at 2 P. M. in default of $5,000 bail.

New York, June 24th, 1908.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

Def't Moses Haas disch'g'd on bail to await examination, June 24th, 1908.

JOHN A. SHIELDS,
U. S. Commissioner.

Attended exam. & hearing adj'd to Aug. 17, 1908, 2 P. M.
July 17, 1908.

JOHN A. SHIELDS,
U. S. Com.

Attended and examination adj'd to Sept. 17th 1908 at 2 P. M.
August 17th, 1908.

JOHN A. SHIELDS,
U. S. Com.

241 Adjourned to Oct. 2nd, 1908, at 2 P. M.

ALEX. GILCHRIST, *Jr.*,
U. S. Com.

Attended & Exam. adj'd to Oct. 12, 1908, 2 P. M.
Oct. 2, 1908.

JOHN A. SHIELDS,
U. S. Com.

Attended & Exam. adj'd to Nov. 4, 1908, at 2 P. M.
Oct. 12th, 1908.

JOHN A. SHIELDS,
U. S. Com.

Hearing held as to deft Haas & further Exam. as to him adj'd to Nov. 7th, 1908 10:30 A. M.
Nov. 4th, 1908.

JOHN A. SHIELDS,
U. S. Com.

212 The President of the United States of America to the Marshal of the United States for the Southern District of New York and to his Deputies, or any or either of them:

Whereas, complaint on oath in writing hath been made to me charging that Moses Haas and Frederick A. Peckham did, at the District of Columbia, and on divers days in said complaint mentioned, conspire to defraud the United States and to commit an offense against the United States in manner and form as is set forth in said complaint and exhibits thereto attached and made a part thereof, a copy of which complaint and exhibits hereto attached and made a part hereof; against the peace of the United States and their dignity and against the form of the statute of the United States in such case made and provided; and it being satisfactorily proven to me that the said Moses Haas and Frederick A. Peckham are now within the Southern District of New York,

Now, therefore, you are hereby commanded, in the name of the President of the United States of America to apprehend the said Moses Haas and Frederick A. Peckham and bring their bodies forthwith before me, or some Judge or Justice of the United States, wherever in the State of New York they may be found, that they may then and there be dealt with according to law for the said offense.

JOHN A. SHIELDS,
United States Commissioner for the Southern District of New York.

HENRY L. STIMSON,
United States Attorney.

243 Before John A. Shields, Esq., U. S. Commissioner, Southern District of New York.

THE UNITED STATES
vs.
EDWIN S. HOLMES, JR., MOSES HAAS, and FREDERICK A. PECKHAM.

THE UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

R. S., Sec. 5440.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Goldthwaite H. Door, being first duly sworn deposes and says:

That he is an assistant United States Attorney for the Southern District of New York:

That on the 29th day of May, A. D. 1908, there were returned into the Supreme Court of the District of Columbia by the Grand Jury of that Court, two certain indictments against Moses Haas and Frederick A. Peckham, charging them with violating Section 5440 of the Revised Statutes of the United States as amended; that
244 one of said indictments was numbered 26086 and a duly certified copy thereof is hereto annexed, marked Exhibit A and made part hereof; that the other of said indictments was numbered 26087 and a duly certified copy thereof is hereto annexed, marked Exhibit B, and made part hereof.

First Count.

On information and belief derived from Exhibit A, affiant says that heretofore to wit, on May 31, 1905, and at the District of Columbia, and under the circumstances and conditions set forth and averred in said Exhibit A, the said Moses Haas and Frederick A. Peckham unlawfully did conspire with one Edwin S. Holmes, Jr., and one Lewis C. Van Riper, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the Department of Agriculture, Bureau of Statistics in the next succeeding month of June, and of its right to administer an intelligent and honest service in that connection in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions in said Exhibit A. set forth and described; and that in pursuance of said conspiracy and to effect its object, said Moses Haas at the places and at the times in said Exhibit A. set forth, did do and perform the several acts averred in said exhibit A. to have been done in pursuance of said conspiracy.

245 *Second Count.*

On information and belief derived from said Exhibit B., affiant further says that heretofore, to wit, on May 31, 1905, and at the District of Columbia and under the circumstances and conditions set forth in said Exhibit B., the said Haas and the said Peckham unlawfully did conspire with said Lewis C. Van Riper, to commit an offense against the United States that is to say: the offense of promising, offering and giving to an officer of the United States in an official function under and by virtue of a certain department and office of the government thereof, that is to say, to the said Edwin S. Holmes, Associate Statistician of the said Bureau of Statistics, a sum of money, the amount of which is to affiant unknown, to induce the said Holmes to do certain acts in violation of his lawful duty, that is to say, to induce the said Holmes unlawfully to do and perform the several acts as averred and set forth in said Exhibit B., and that in pursuance of said last mentioned conspiracy and to effect its object, the said Haas at the times and at the places in said Exhibit B. set forth did do the several acts averred and alleged in said Exhibit B. to have done in pursuance of said last mentioned conspiracy; against the peace of the United States and their dignity, and contrary to the form of the statute of the same in such case made and provided

246 Affiant is informed and believes that the said Moses Haas and the said Frederick A. Peckham are now within the Southern District of New York.

GOLDTHWAITE H. DOOR.

Subscribed and sworn to before me this 24th day of June, A. D. 1908.

JOHN A. SHIELDS,
U. S. Commissioner.

Attended and Exam. as to Peckham, adjd. Nov. 7th, 1908, at 10:30 A. M.
Nov. 4th, 1908.

JOHN A. SHIELDS,
U. S. Com.

Attended and exam. adj'd to Nov. 14th, at 10:30 A. M.
Nov. 7th, 1908.

JOHN A. SHIELDS,
U. S. Com.

Attended and Exam. adj'd to Nov. 16th, 1908.

JOHN A. SHIELDS,
U. S. Com.

Attended and Exam. adj'd to await decision of Court and motion to dismiss.
Nov. 16th, 1908.

JOHN A. SHIELDS,
U. S. Com.

247 In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

248 Filed in Open Court, May 29, 1908. J. R. Young, Clerk

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That before and during the three years last past the United States, through the Department of Agriculture and a certain bureau of that department, to wit, the Bureau of Statistics, has exercised the governmental function of acquiring and diffusing among the people of the United States useful information on subjects connected with agriculture, including the subject of cotton; that in acquiring such information pertaining to cotton the United States, through the said department and bureau, has made use of divers agencies, to wit, among others correspondence with cotton planters and dealers in and ginners of cotton, through employees and agents of the said department and bureau located in the several States where cotton is grown, and through special investigations in the field by employees and agents of the said department and bureau; and that in diffusing the said information pertaining to cotton the United States has issued, on or near the third day of each of the months of June, July, August, September, October and December in each year crop reports embracing statements, based upon the information so acquired, of the conditions of the cotton crop, by States, in the United States,

249 with such explanations, comparisons, and information as might be useful for illustrating that matter,—which said cotton-crop reports have been by law required to be submitted to and officially approved by the Secretary of Agriculture before so being issued or published; and that under the practice, custom and regulation of the said department established and sanctioned by the said Secretary of Agriculture, no officer or employee thereof to whom such information might come by reason of his office or employment had been permitted to issue, publish or divulge to unauthorized persons, and all such officers and employees have been prohibited from

issuing, publishing or divulging to unauthorized persons any such information so acquired as aforesaid, or any such cotton-crop report, or any information indicating the probable contents or character of the same, in advance of its official issuance and publication, or without its first being submitted to an- officially approved by the said Secretary.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that Moses Haas, Edwin S. Holmes, Junior, and Frederick A. Peckham, each late of the District of Columbia, on the thirty-first day of May, in the year of our Lord one thousand nine hundred and five, at and within the said District of Columbia unlawfully did knowingly conspire, combine, confederate and agree together, and with one Lewis C. Van Riper, who is not made a defendant herein, to defraud the United States of and concern-
250 ing its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the said department and bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described; that is to say:

The said Edwin S. Holmes, junior, before and on the day last aforesaid, was an officer and employee of the said department and bureau, to wit, associate statistician thereof; and a portion of the information upon which the said cotton-crop report was to be based, and which had been acquired by the said department and bureau in the manner aforesaid, and indicated the probable contents and character of the said report, had come and was known to the said Edwin S. Holmes, junior, in his capacity as such officer and employee; and thereafter, and before the time of the official issuance and publication of the said report, other like information would come to and be known to the said Edwin S. Holmes, junior, in his said capacity.

The said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper, who then and there were neither officers nor employees either of the said department or of the said bureau, and who then and there were persons not in any manner authorized to have or know the information last aforesaid, or be informed as to the probable contents or character of the said crop report in advance of its said
251 official issuance and publication, or without such report first being submitted to and officially approved by the said Secretary, and who well knew all the premises in this indictment above set forth, were thereafter, and in advance of the said official issuance and publication of the said cotton-crop report, to obtain and receive from the said Edwin S. Holmes, junior, and the said Edwin S. Holmes, junior, also then well knowing the said premises, was to give and divulge to them the said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper information which as aforesaid had and would come and be known to him the said Edwin S. Holmes, junior, in his said capacity as an officer and employee of the said department and bureau, and this without the said cotton-crop

report being first submitted to and officially approved by the said Secretary of Agriculture; it being the design and intention of the said Frederick A. Peckham, Moses Haas, Edwin S. Holmes, junior, and Lewis C. Van Riper in so doing to make use of the said information, before the lawful issuance and publication of the said report, for their pecuniary benefit, in speculating in cotton, in view of the probable effect upon the market price of that commodity which the subsequent lawful issuance and publication of the said cotton crop report would have, and in other ways to the said grand jurors unknown.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful con-
252 spiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas at the District of Columbia, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, junior, a certain share of whatever moneys, they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper, or either of them, should acquire through speculations in cotton based upon information to be furnished by the said Edwin S. Holmes, junior, to them, which information has been or should be acquired by the said Edwin S. Holmes, junior, in his official capacity as to the probable contents of the cotton-crop report to be issued in the month of June then next ensuing.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New York, in the Southern District of New York, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the first day of June, in the year of our Lord nineteen hundred
253 and five, unlawfully did journey from the said City of New York in said Southern District of New York to the said City of Washington, said District of Columbia.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, junior, at said District of Columbia, certain information which was to be contained in said cotton crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas at the said City and Southern District of New York on the said second day of June, in the year nineteen hundred and five unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, junior, to the said Lewis C. Van Riper.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas the said Edwin S. Holmes, junior, and the said Frederick A. Peckham, at the time and place and
254 in manner and form aforesaid, unlawfully did conspire together, and with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

DANIEL W. BAKER,
Attorney for the United States in and for the District of Columbia.

(Endorsed:) No. 26086. United States vs. Edwin S. Holmes, Junior, Frederick A. Peckham, and Moses Haas. Conspiracy to Defraud the United States. Witnesses: Andrew Parker, Sam'l Baulris, Wm. L. Lanning, Nathaniel Murray, Louis C. Van Riper, Herbert H. Smith, Richard A. Springs, Victor Armstead, Russell R. Coates, Walter Mayer. A true bill. E. J. Walsh, Foreman.

255 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court to be in due form.

Witness my hand and seal this 30 day of October, 1908.

(Signed) HARRY M. CLABAUGH, [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and

attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk*.

256 In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

257 Filed in Open Court May 29, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath do present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States, on and before the thirty-first day of May, in the year nineteen hundred and five, there was, and from thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted

258 in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician

with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published.

That each of said reports was prepared by the said statistician or the said associate statistician in the manner aforesaid, from certain information collected by the said Bureau from divers sources approved by the said Bureau; amongst others being certain correspondents of the said Bureau of Statistics residing in those parts of the United States where were grown the particular crops upon
259 which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said Bureau, known as Statistical Agents, and certain other expert employees of the said Bureau, whose duty it was to travel throughout the United States and ascertain the conditions of the said crops.

And that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted *by* said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the
260 people of the United States, and that said crop reports were prepared at great expense to the said United States and were to be fair, impartial, correct and accurate; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture

as aforesaid, did affect to a great or less extent the market price of the several crops mentioned therein.

That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture, established and sanctioned by the said Secretary, under which the giving out to the public of any information collected by the said Bureau of Statistics or its said officers or its said employees, to be used in the preparation of or to be contained in any of said crop reports, was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published. And that during the time and times aforesaid it was the duty of the said statistician and of the said associate statistician and said other officials and employees aforesaid of the said Bureau of Statistics to prepare a true and accurate report upon each of the said crops, from the information as to said crops obtained as aforesaid, and without regard to the influence which any such report might have upon the market price of the crop therein mentioned.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and
261 employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matters and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employees of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture as aforesaid, was a report upon the cotton crop of the United States, which became known as and was called the cotton-crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

262 That on the sixteenth day of November, in the year nineteen hundred and three, and thence continuously until the ninth day of June, in the year nineteen hundred and five, one Edwin S. Holmes, junior, held and occupied the office of, and was, such associate statistician in the said Bureau of Statistics in the Department of Agriculture, and as such was an officer of the United

States and a person acting for and on behalf of the United States in an official function under and by authority of the said Department and Bureau, and as such associate statistician the said Edwin S. Holmes, junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports, including said cotton-crop report, and, in the absence of the said statistician from his office, the said Edwin S. Holmes, junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employees of said Bureau as aforesaid, all of the said crop reports, including the said cotton-crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports, including said cotton-crop reports, and, in the absence of the said statistician, in the performance of his duties in preparing said crop reports, including the said cotton-crop reports, he, the said Edwin
S. Holmes, junior, did, before the official approval and is-
263 suance and publication of each of said crop reports, including the said cotton-crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton-crop reports, were prepared, and of the matters and things and other information which were to be contained in each of said crop reports, including said cotton-crop reports.

And that during the period last aforesaid it was the duty of said Edwin S. Holmes, junior, as such associate statistician, whenever he prepared or assisted in preparing any of said reports, to prepare and assist in preparing a true and accurate report, from the information as to said crops obtained as aforesaid, and without regard to the effect which such report might have upon the market price of the crop therein mentioned, and honestly and carefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter and information from which said crop reports, including said cotton crop reports, were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton crop reports, knowledge of which was so, as aforesaid, acquired by him, the said Edwin S. Holmes, junior, as such associate statistician, until the said reports had been prepared, officially approved, and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, junior, as such associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any
264 person not employed in or connected with said Bureau of Statistics any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so, as aforesaid, acquired by him, except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to a certain

Frederick A. Peckham and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth, and to a certain Lewis C. Van Riper.

That on the thirty-first day of May, in the year nineteen hundred and five, at the District of Columbia aforesaid, said Moses Haas and said Frederick A. Peckham unlawfully did conspire, combine, confederate and agree together with said Lewis C. Van Riper, who is not made a defendant herein, to commit an offense against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States, and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, junior, to do certain acts in violation of his lawful duty, that is to say, to induce him, the said Edwin S. Holmes, junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes,
265 junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton crop report, which was to be issued, as hereinbefore set forth, in the month of June next ensuing, and in advance of the time when the matter and information contained in such cotton crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Frederick A. Peckham and the said Lewis C. Van Riper, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the city of Washington, in the District of Columbia, on the said thirty-first day of May, in the year nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, junior, a certain share, to wit, a sum equal to one-fourth, of whatever moneys they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper or either of them should acquire through speculations in
266 cotton based upon information to be furnished by the said Edwin S. Holmes, junior, to them, which information was to be contained in the cotton crop report to be issued in the month of June then next ensuing.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful con-

spiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the city of New York, in said Southern District of New York, on the said thirty-first day of May, in the year nineteen hundred and five.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said city of New York, in the said Southern District of New York, to the said city of Washington, in said District of Columbia.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, junior, at the said city of Washington, in said District of Columbia, certain information which was to be contained in said cotton crop report to
267 be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the said city and Southern District of New York, on the said second day of June, in the year nineteen hundred and five, unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, junior, to the said Lewis C. Van Rider.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas and the said Frederick A. Peckham, at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others, to commit an offense against the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

268 (Endorsed:) No. 26087. United States *vs.* Moses Haas and Frederick A. Peckham. Conspiracy to Commit an Offense against the United States. Witnesses: Andrew Parker, Sam'l Baulsir, Wm. L. Lanning, Nathaniel Murray, Louis C. Van Riper, Herbert H. Smith, Rich'd A. Springs, Victor Armstead, Russell R. Coats, Walter Mayer. A true bill. E. J. Walsh, Foreman.

269 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court this 30th day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30th day of October, 1908.

(Signed) HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk.*

270 The accused Moses Haas named in the annexed warrant, having been arrested and brought before me on the said warrant, and the charges in the warrant and complaint contained having been duly explained to the said accused, and he being duly cautioned and informed of his rights in the matter, and having said that he demanded an examination, and said examination having been had and it appearing to me from the testimony submitted that there is probable cause to believe the said Moses Haas guilty of the offenses charged in the annexed warrant and the copy of the complaint annexed thereto and made a part thereof, except of the offences charged in counts Four, Six and Eight of said complaint which were withdrawn on said examination, he is hereby committed for trial at the District of Columbia, being the District in which the offences charged are alleged to have been committed. And the said Moses Haas is hereby committed to the custody of the United States Marshal for the Southern District of New York until a war-

rant for his removal shall issue by the U. S. District Judge or he shall be otherwise dealt with according to law.

New York, November 30th, 1908.

JOHN A. SHIELDS,
U. S. Commissioner.

To William Henkel, Esq., U. S. Marshal.

271 UNITED STATES
vs.
THEODORE H. PRICE and MOSES HAAS.

Warrant to Apprehend.

Henry L. Stimson, U. S. Att'y.

I hereby depute Mr. Reed to execute the within writ.
June 24th, 1908.

WM. HENKEL,
U. S. Marshall.

12212.

272 *To* the President of the United States of America to the Marshal of the United States for the Southern District of New York and to his deputies or any or either of them:

Whereas complaint on oath in writing hath been made to me charging that Theodore H. Price and Moses Haas did at the District of Columbia, and on divers days in said complaint mentioned conspire to defraud the United States, in manner and form as is set forth in said complaint and Exhibits thereto attached and made a part thereof, a copy of which complaint and exhibits is hereto attached and made a part hereof, against the peace of the United States and their dignity and against the form of the statute of the United States in such case made and provided; and it being satisfactorily proven to me that the said Theodore H. Price and Moses Haas are now within the Southern District of New York.

Now, therefore you are commanded, in the name of the President of the United States of America, to apprehend the said Theodore H. Price and Moses Haas and bring their bodies forthwith before me, or some judge or justice of the United States wherever in the State of New York they may be found, that they may then and there be dealt with according to law for the said offense.

Given under my hand and seal this 24th day of June, in the year of our Lord, one thousand nine hundred and eight.

(Sg.) JOHN A. SHIELDS,
United States Commissioner for the Southern District of New York.

HENRY L. STIMSON,
United States Attorney.

273 (Endorsed on Cover.)

Received this warrant on the 24th day of June, 1908, at New York City and executed the same by arresting the within named Moses Haas, at New York City on the 24th day of June, 1908, and have his body now in court as within I am commanded.

W. HENKEL,
U. S. Marshall.

The within named Moses Haas was arrested and brought before me on the within warrant and the charge herein contained being duly explained to said accused and he being duly cautioned and informed of his rights in the matter says that he demands an examination and the said accused Moses Haas is hereby committed to the custody of the U. S. Marshal for the Southern District of New York to be brought before me for examination on the 17th day of July, 1908, at 2 O'clock in default of $5,000 bail.

New York, June 24th, 1908.

JOHN A. SHIELDS
U. S. Commissioner, S. D. of New York.

Def't Moses Haas discharged on bail to await trial.
June 24th, 1908.

JOHN A. SHIELDS,
U. S. Com.

Attended and Examination adj'd to Aug. 17, 1908.
July 7, 1908.

JOHN A. SHIELDS,
U. S. Com.

Attended and examination adj'd to Sept. 17, 1908 at 2 P. M.
Aug. 17, 1908.

JOHN A. SHIELDS,
U. S. Com.

Adjourned to October 2, 1908, at 2 P. M.

ALEX. GILCHRIST, JR.,
U. S. Com.

Attended & examination adj'd to Oct. 12, 1908.
Oct. 2, 1908.

JOHN A. SHIELDS,
U. S. Com.

274 Attended & examination adj'd to Nov. 4, 1908, 2 P. M.
October 22, 1908.

JOHN A. SHIELDS,
U. S. Com.

On motion of U. S. Att'y complaint and warrant withdrawn as to defendant Theodore H. Price within named.
Nov. 4th, 1908.

JOHN A. SHIELDS,
U. S. Com.

Arg. heard as to def't Haas and further examination as to Haas adj'd to Nov. 7 at 10:30 A. M.
Nov. 4th, 1908.

JOHN A. SHIELDS.
U. S. Com.

275 Before John A. Shields, Esq., United States Commissioner, Southern District of New York.

THE UNITED STATES
vs.
EDWIN S. HOLMES, JR., THEODORE H. PRICE, and MOSES HAAS.

THE UNITED STATES
vs.
THEODORE H. PRICE & MOSES HAAS

R. S., Sec. 5440.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Goldhwaite H. Door, being first duly sworn, deposes and says:
That he is an Assistant District Attorney for the Southern District of New York;
That on the 29th day of May, A. D. 1908, there were returned into the Supreme Court of the District of Columbia, by the Grand Jury of that body, two certain indictments against Theodore H. Price, and Moses Haas, charging them with violating Section 5440 of the Revised Statutes of the United States as amended; that
276 one of said indictments was numbered 26088, and a duly certified copy thereof is hereto annexed marked Exhibit A, and made a part hereof, and that the other of said indictments was numbered 26089, and a duly certified copy thereof is hereto annexed, marked Exhibit B and made part hereof.

First Count.

On information and belief derived from said Exhibit A, affiant says that heretofore, to wit, on the 31st day of May, A. D. 1905, and at the District of Columbia, and under the circumstances and conditions set forth and averred in the first count of said Exhibit A, the said Theodore H. Price and Moses Haas unlawfully did knowingly conspire, combine, confederate and agree with one Edwin S. Holmes, Jr., and divers other persons to this affiant unknown to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton crop report to be issued and published in the said Department and Bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that connection in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and condi-

tions in said First Count of Exhibit A set forth and described; and that in pursuance of said conspiracy, and to effect the object
277 thereof, the said Price, the said Haas, and the said Holmes at the places and at the times in said first count set forth respectively did each do and perform the several acts averred and alleged in said first count to have been done in pursuance of and to effect the object of said conspiracy.

Second Count.

On information and belief, derived from said Exhibit A, affiant further says that on the 15th day of November, 1904, and at all times between that day and the 5th day of July, 1905, and on said last mentioned day, at the District of Columbia aforesaid, and under the circumstances and conditions set forth, and averred in the second count of Exhibit A, the said Theodore H. Price and Moses Haas, did conspire together with the said Edwin S. Holmes, Jr., and divers other persons to this affiant unknown to defraud the United States in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement set forth in said second count; and that in pursuance of said last mentioned conspiracy, and to effect its object, the said Price, Haas, and Holmes, at the places and at the times set forth in said Second Count respectively did each do the several acts alleged in said Second Count to have been done in pursuance of and to effect the object of said conspiracy.

278 *Third Count.*

On information and belief derived from said Exhibit A, affiant further says that on the 31st day of May, 1905, and at the District of Columbia, and under the circumstances and conditions set forth and averred in said Second Count of Exhibit A, the said Theodore H. Price, and Moses Haas unlawfully did conspire with the said Edwin S. Holmes, Jr., and divers other persons to this affiant unknown, to defraud the United States in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement set forth in said Third Count; and that in pursuance of said last mentioned conspiracy, and to effect its object, the said Price, Haas, and Holmes, at the places and times set forth in said Third Count respectively did each do and perform the several acts averred in said Third Count to have been done in pursuance of said conspiracy.

Fourth Count.

On information and belief derived from said Exhibit A, affiant further says that on the 31st day of May, 1905, and at the District of Columbia, and under the circumstances and conditions set forth in said Second Count of Exhibit A, the said Theodore H. Price, and Moses Haas unlawfully did conspire with the said Edwin S. Holmes, Jr., and divers other persons to affiant unknown, to commit an of-

fense against the United States, that is to say, the offence of
279 misconduct on the part of the said Edwin S. Holmes, Jr., in his office of Associate Statistician in the Department of Agriculture to be done and committed in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement set forth in said Fourth Count; and that in pursuance of said last mentioned conspiracy and to effect its object, the said Price, Haas and Holmes, at the places and at the times set forth in said Fourth Count respectively did each do and perform the several acts averred and alleged in said Fourth count to have been done in pursuance of said last mentioned conspiracy.

Fifth Count.

On information and belief derived from said Exhibit A, affiant further says that on and before November 15th, 1904, and continuously thereafter, until and on July 5, 1905, and at the District of Columbia and under the circumstances and conditions in said Second Count set forth and averred, the said Theodore H. Price, and Moses Haas unlawfully did conspire with the said Edwin S. Holmes, Jr., and divers other persons to affiant unknown to defraud the United States in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement set forth in said Fifth Count and that in pursuance of said last mentioned conspiracy and to effect its object, the said Price, Haas, and Holmes, at the places and times in said fifth count set forth, respectively did each do and perform the several acts averred in said Fifth Count to have been done in pursuance
280 of said last mentioned conspiracy.

Sixth Count.

On information and belief derived from said Exhibit A, affiant further says that on and before November 15, 1904, and continuously thereafter until and on July 5th, 1905, and at the District of Columbia, and under the circumstances and conditions set forth in said Second Count of Exhibit A, the said Theodore H. Price and the said Moses Haas unlawfully did conspire with the said Edwin S. Holmes, Jr. and divers other persons to affiant unknown, to commit an offense against the United States, that is to say, the offense of misconduct on the part of the said Edwin S. Holmes, Jr., in his said office of Associate Statistician in said Department of Agriculture to be done and committed in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement set forth in said sixth count; and that in pursuance of said last mentioned conspiracy and to effect its object, the said Price, Haas, and Holmes, at the places and at the times set forth in said sixth count respectively did each do and perform the several acts averred and alleged in said sixth count, to have been done in pursuance of said last mentioned conspiracy.

Seventh Count.

On information and belief derived from said Exhibit A, affiant further says that on May 31st, 1905, and at the District of
281 Columbia, and under the circumstances and conditions in the Second Count of said Exhibit A, set forth, the said Theodore H. Price and Moses Haas, did unlawfully conspire with the said Edwin S. Holmes, Jr., and with divers other persons to affiant unknown to defraud the United States in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement set forth in the Seventh Count of said Exhibit A; and that in pursuance of said last mentioned conspiracy and to effect its object, the said Price, Haas, and Holmes, at the places and times in said seventh count set forth respectively did each do and perform the several acts averred in said seventh Count to have been done in pursuance of said last mentioned conspiracy.

Eight Count.

On information and belief derived from said Exhibit A, affiant further says that on May 31st, 1905, and at the District of Columbia, and under the circumstances and conditions in the Second Count of Exhibit A, set forth, the said Theodore H. Price and Moses Haas unlawfully did conspire with the said Edwin S. Holmes, Jr., and with divers other persons to the affiant unknown to commit an offense against the United States, that is to say, the offense of misconduct on the part of said Edwin S. Holmes, Jr. in his said Office of Associate Statistician in said Department of Agriculture to be done and committed in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement set forth in said Eighth Count, and that in pursuance
282 of said last mentioned conspiracy and to effect its object the said Price, Haas and Holmes, at the places and times set forth in said Eighth Count respectively did each do and perform the several acts averred and alleged in said Eighth Count to have been done in pursuance of and to effect the object of said conspiracy.

Ninth Count.

On information and belief derived from said Exhibit B, affiant further says that heretofore, to wit, on the 31st day of May, 1905, and at the District of Columbia, and under the circumstances and conditions set forth in first Count of said Exhibit B, the said Theodore H. Price and Moses Haas, unlawfully did conspire to commit an offense against the United States, that is to say, the offense of promising, offering, and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the Government thereof, that is to say, to the said Edwin S. Holmes, Jr. Associate Statistician of said Bureau of Statistics, a sum

of money, the amount of which is to affiant unknown, to induce the said Holmes to do certain acts, in violation of his lawful duty, that is to say, to induce the said Holmes to do the said acts set forth in said first Count of Exhibit B, and that in pursuance of said last mentioned conspiracy, and to effect its object, the said Theodore H. Price and Moses Haas, at the places and times in said First
283 Count of Exhibit B, set forth respectively did each do and perform the several acts averred in said First Count to have been done in pursuance of said last mentioned conspiracy.

Tenth Count.

On information and belief derived from said Exhibit B, affiant further says that on May 31st, 1905, and at the District of Columbia, and under the circumstances and conditions in the First Count of Exhibit B, set forth the said Theodore H. Price, and Moses Haas unlawfully did conspire to commit an offense against the United States, that is to say, the offense of promising, offering and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain Department and office of the Government thereof, that is to say, to the said Edwin S. Holmes, Jr. Associate Statistician of said Bureau of Statistics, a sum of money the amount of which is to affiant unknown to induce the said Edwin S. Holmes, Jr., to do certain acts in violation of his lawful duty, that is to say, to induce the said Holmes unlawfully to do the several acts as set forth and averred in said Second Count of Exhibit B, and that in pursuance of said last mentioned conspiracy and to effect its object, the said Price and Haas at the places and times therein set forth respectively did each do and perform the several acts averred therein to have been
284 done in pursuance of said last mentioned conspiracy, against the peace of the United States and their dignity and contrary to the form of the statute of the same, in such case made and provided.

Affiant is informed and believes that the said Theodore H. Price, and the said Moses Haas, are now within the Southern District of New York.

GOLDTHWAITE H. DORR.

Subscribed and sworn to before me this 24th day of June, Ad. 1908.

JOHN A. SHIELDS,
U. S. Commissioner.

Here follows Exhibit A
(Certified copy of indictment # 26088.)
Here follows Exhibit B
(Certified copy of indictment # 26089

285 In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

286 *Indictment.*

Filed in Open Court, May 29, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath do present: That before and during the three years last past the United States, through the Department of Agriculture and a certain bureau of that department, to wit, the Bureau of Statistics, has exercised the governmental function of acquiring and diffusing among the people of the United States useful information on subjects connected with agriculture, including the subject of cotton; that in acquiring such information pertaining to cotton the United States, through the said department and bureau, has made use of divers agencies, to wit, among others corresponding with cotton planters and dealers in and ginners of cotton, through employees and agents of the said department and bureau located in the several States where cotton is grown, and through special investigations in the field by employees and agents of the said department and bureau; and that in diffusing the said information pertaining to cotton the United States has issued, on or near the third day of each of the months of June, July, August,
287 September, October and December in each year crop reports embracing statements, based upon the information so acquired, of the conditions of the cotton crop by States, in the United States, with such explanations, comparisons, and information as might be useful for illustrating that matter, which said cotton crop reports have been by law required to be submitted to and officially approved by the Secretary of Agriculture before so being issued or published; and that under the practice, custom and regulation of the said department established and sanctioned by the said Secretary of Agriculture, no officer or employee thereof to whom said information might come by reason of his office or employment be-

been permitted to issue, publish or divulge to unauthorized persons, and all such officers and employees have been prohibited from issuing, publishing or divulging to unauthorized persons, any such information so acquired as aforesaid, or any such cotton-crop report, or any information indicating the probable contents or character of the same, in advance of its official issuance and publication, or without its first being submitted to and officially approved by the said Secretary.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that Theodore H. Price, Moses Haas and Edwin S. Holmes, Junior, each late of the District of Columbia, on the thirty-first day of May, in the year of our Lord nineteen hundred and five, at the said District of Columbia, unlawfully did knowingly conspire, combine, confederate and agree together; and with divers
288 other persons to the said grand jurors unknown, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the said department and bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described; that is to say:

The said Edwin S. Holmes, Junior, before and on the day last aforesaid, was an officer and employee of the said department and bureau, to wit, Associate Statistician thereof; and a portion of the information upon which the said cotton-crop report was to be based, and which had been acquired by the said department and bureau in the manner aforesaid, and indicated the probable contents and character of the said report, had come and was known to the said Edwin S. Holmes, Junior, in his capacity as such officer and employee; and thereafter, and before the time of the official issuance and publication of the said report, other like information would come to and be known to the said Edwin S. Holmes, junior, in his said capacity.

The said Theodore H. Price and Moses Haas, who then and there were neither officers nor employees either of the said department or of the said bureau, and who then and there were persons not in any manner authorized to have or know the information last
289 aforesaid, or be informed as to the probable contents or character of the said crop report in advance of its said official issuance and publication, or without such report first being submitted to and officially approved by the said Secretary, and who well knew all the premises in this indictment above set forth, were thereafter, and in advance of the said official issuance and publication of the said cotton-crop report, to obtain and receive from the said Edwin S. Holmes, junior, and the said Edwin S. Holmes, junior, also then well knowing the said premises, was to give and divulge to them, the said Theodore H. Price and Moses Haas, information which as aforesaid had and would come and be known to him, the said Edwin S. Holmes, junior, in his said capacity as an officer and employee

of the said department and bureau, and this without the said cotton-crop report being first submitted to and officially approved by the said Secretary of Agriculture; it being the design and intention of the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, in so doing to make use of the said information, before the lawful issuance and publication of the said report, for their pecuniary benefit, in speculating in cotton, in view of the probable effect upon the market price of that commodity which the subsequent lawful issuance and publication of the said cotton crop report would have, and in other ways to the said grand jurors unknown.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath afore-
290 said, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price and Moses Haas afterwards, to wit, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five, at the City of New York, and in the Southern District of New York, unlawfully did meet together to confer concerning the said unlawful conspiracy, combination, confederation and agreement.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year of our Lord nineteen hundred and five, unlawfully did journey from the said City of New York, in the said Southern District of New York, to the City of Washington, in the District of Columbia.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, afterwards to wit, on the said first day of June, in the year of our Lord nineteen hundred and five, and at the District of Columbia aforesaid unlawfully did give the information in this indictment above
291 mentioned, pertaining to the cotton-crop report in this indictment above described, which had on and before that date been acquired by the said department and bureau in the manner hereinabove set forth, to the said Moses Haas for transmission by him to the said Theodore H. Price.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, afterwards, to wit, on the second day of June, in the year of our Lord nineteen hundred and five, and at the District of Columbia aforesaid, and before the official issuance and publication of the said cotton-crop report, unlawfully did give the information in this indictment above mentioned, pertaining to the cotton-crop report in this indictment

above described, which had on and before that date been acquired by the said department and bureau in the manner hereinabove set forth, to the said Moses Haas for transmission by him to the said Theodore H. Price.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price afterwards, to wit, on the said second day of June, in the year of our Lord nine-
392 teen hundred and five, and before the official issuance and publication of the said cotton-crop report, at and within the said City and Southern District of New York, unlawfully did receive from the said Moses Haas the information last above mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the fifteenth day of November, in the year nineteen hundred and four, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time
and times aforesaid there were in the said Bureau other offi-
393 cers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain reports upon

the condition of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; that each of said reports was prepared by the said statistician or the said associate
294 statistician in the manner aforesaid, from certain information collected by the said Bureau from divers sources approved by the said Bureau; amongst others being certain correspondents of the said Bureau of Statistics residing in those parts of the United States where were grown the particular crops upon which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said Bureau, known as statistical agents, and certain other expert employees of the said Bureau, whose duty it was to travel throughout the United States and ascertain the condition of the said crops; and that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said Department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the
295 said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were to be as nearly fair, impartial, correct and accurate as it was possible for such reports to be, and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops therein mentioned.

That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture, established and sanctioned by the said Secretary, under which the giving out to the public of any information collected by the said Bureau of Statistics or its said officers or its said employees to be used in the preparation

of, or to be contained in, any of said crop reports, was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published.

And that during the time and times aforesaid it was the duty of the said statistician and of the said associate statistician and said other officials and employees aforesaid of the said Bureau of
296 Statistics to prepare a true and accurate report upon each of the said crops, from the information as to said crops obtained as aforesaid and without regard to the influence which any such report might have upon the market price of the crop therein mentioned.

And that during the time and times aforesaid the said statistician and associate statistician and the other officers and employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matters and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employees of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid, and so
297 submitted to and officially approved by the said Secretary of Agriculture, as aforesaid, was a report upon the cotton crop of the United States, which was known as and called the cotton crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November in the year nineteen hundred and three, and thence continuously until the ninth day of June in the year nineteen hundred and five, one Edwin S. Holmes, junior, held and occupied the office of, and was, such associate statistician in said Bureau of Statistics in the Department of Agriculture, and as such associate statistician the said Edwin S. Holmes, junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician the said Edwin S. Holmes, junior, as such associate statistician, was during the period last aforesaid charged

with the duty of preparing, with the aid and assistance of said other officers and employees of said Bureau as aforesaid all of the said crop reports including the said cotton crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in
298 the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician, in the performance of his duties in preparing said crop reports, including the said cotton crop reports, he, the said Edwin S. Holmes, junior, did, before the official approval and issuance and publication of each of said cotton crop reports, including the cotton crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton crop reports, were prepared and of the matters and things and other information which were to be contained in each of said crop reports including said cotton crop reports.

And that during the period last aforesaid it was the duty of said Edwin S. Holmes, junior, as such associate statistician, whenever he prepared or assisted in preparing any of said reports to prepare and assist in preparing a true and accurate report from the information as to said crops obtained as aforesaid and without regard to the effect which such report might have upon the market price of the crop therein mentioned and honestly and carefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter and information from which said crop reports including said cotton crop reports were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton-crop reports, knowledge of which was so as aforesaid acquired by him the said Edwin S. Holmes,
299 junior, as such associate statistician, until the said reports had been prepared, officially approved and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, junior, as said associate statistician, thereafter honestly and carefully to guard and keep secret and not divulge to any person not employed in or connected with said Bureau any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so as aforesaid acquired by him, except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises in this count aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, junior, and to a certain Theodore H. Price and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth.

That on the fifteenth day of November, in the year nineteen hundred and four, and continuously and at all times between said fifteenth day of November, nineteen hundred and four, and the fifth day of July, nineteen hundred and five, and on said day last aforesaid and at the District of Columbia aforesaid, the said Edwin S. Holmes, junior, Theodore H. Price and Moses Haas unlawfully, cor-

ruptly and fraudulently did conspire, combine, confederate and agree together with certain other persons to the grand jurors aforesaid unknown, to defraud the United States in the dishonest and corrupt manner and through and by means of the dishonest and
300 corrupt schemes and arrangement following, that is to say: That in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issuance and publication of each of said cotton crop reports, as hereinbefore set forth, and in advance of the time or times when the matter and information contained in each of said cotton crop reports could lawfully be made public, and to prevent, obstruct and impair the due and orderly administration of the business and affairs of said Department of Agriculture, and to the prejudice of the said United States, he, the said Edwin S. Holmes, junior, should and would thereafter in so far as in him the power lay, furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which were to be contained in each of said cotton crop reports, knowledge of which was as aforesaid, acquired by the said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the District of Columbia aforesaid, and on
301 the twentieth day of November, nineteen hundred and four, and on divers other days between the said day last aforesaid and the third day of December, in the same year, the said Edwin S. Holmes, junior, unlawfully and corruptly did communicate to the said Moses Haas statistics and matter and information which were to be contained in the said cotton-crop report to be issued on the day last aforesaid, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas on the day and days last aforesaid, and at the said City and Southern District of New York, unlawfully and corruptly did communicate to the said Theodore H. Price the information so furnished to him by the said Edwin S. Holmes, junior, as aforesaid.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price and Moses Haas afterwards, to wit, on the thirty-first day of May, in the year nine-

teen hundred and five, in the said City of New York, and in the said Southern District of New York, unlawfully did meet together to confer concerning the said unlawful conspiracy, combina-
302 tion, confederation and agreement.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said City of New York, in the said Southern District of New York, to the City of Washington, in the District of Columbia.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, and at the District of Columbia aforesaid, unlawfully and corruptly did communicate to the said Moses Haas information which was to be contained in said cotton-crop report to be thereafter issued in said month of June, which information had been acquired by the said Edwin S. Holmes, junior, as aforesaid, in the performance of his official duty.

6. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to
303 effect the object of the same, the said Edwin S. Holmes, junior, afterwards, to wit, on the second day of June, in the year nineteen hundred and five, and at the District of Columbia aforesaid and before the official issuance and publication of the said cotton-crop report, last mentioned, unlawfully and corruptly did communicate to the said Moses Haas further information which was to be contained in said last mentioned cotton-crop report and which has been acquired by the said Edwin S. Holmes, junior, in the performance of his said official duty.

7. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price afterwards, to wit, on the said first and second days of June, in the year nineteen hundred and five, and before the official issuance and publication of the said cotton-crop report, at and within the said City and Southern District of New York, unlawfully did receive from the said Moses Haas the information last above mentioned.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, at the time and place and in manner and form in this count aforesaid, unlawfully did conspire together, and with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute
304 of the same in such case made and provided.

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the thirty-first day of May, nineteen hundred and five, under the circumstances and conditions in the second count of this indictment set forth and averred pertaining to the organization and existence of the Bureau of Statistics in the Department of Agriculture, and pertaining to the employment of the said officers and employees of the said bureau and department in that count mentioned and their duties in regard to the preparation, issuance, publication and character of the crop reports therein mentioned, including the cotton-crop reports, and pertaining to the custom and practice which prevailed in said bureau with reference to the keeping secret of the information collected by said bureau in the preparation of said crop reports, and information to be contained in said reports, and pertaining to the duty which was imposed upon said officers and employees of the said department and bureau therein mentioned of keeping secret and not divulging any of such information, and pertaining to the employment and duties as associate statistician of said Edwin S. Holmes, junior, as therein set forth, and which are now here again alleged to have existed on the day in this count mentioned, at the District of Columbia aforesaid, the said Edwin S. Holmes, junior, the said Moses Haas and the said Theodore H. Price unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together and
305 with divers other persons to the grand jurors aforesaid unknown to defraud the United States in the dishonest and corrupt manner and through and by the means of the dishonest and corrupt scheme and arrangement following, that is to say:

In violation of the duty of him, the said Edwin S. Holmes, junior, to prepare and assist in preparing the said cotton-crop reports duly and accurate// from the information as to said crops obtained as aforesaid and without regard to the influence of such reports upon the market price of cotton, the said Edwin S. Holmes, junior, in assisting in preparing the said cotton-crop report to be issued in the month of June then next following, was to cause and procure the said report to be untrue and inaccurate by causing said report to state that there had been planted in cotton throughout the United States a greater number of acres of land and that the condition of the cotton crop was better than would be shown by such report if it had been based upon the information as to said cotton crop obtained as aforesaid and had been truly and accurately prepared.

And in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as associate statistician as aforesaid, and in advance of the official issue and publication of the said cotton-crop report to be published in the month of June then next following, and in advance of the time when the
306 matters and information to be contained in said cotton-crop report could lawfully be made public, and to prevent, ob-

struct and impair the due and orderly administration of the business and affairs of said Department of Agriculture, and to the prejudice of the said United States, he, the said Edwin S. Holmes, junior, was, in so far as in him the power lay, to furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which were to be contained in said report, knowledge of which was as aforesaid acquired by the said Edwin S. Holmes, junior, in the performance of his duty as such associate satistician.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price and Moses Haas afterwards, to wit, on the said thirty-first day of May, in the year nineteen hundred and five, at the said City of New York, and in the Southern District of New York, unlawfully did meet together to confer concerning the said unlawful conspiracy, combination, confederation and agreement.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to
307 wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said City of New York, in the said Southern District of New York, to the City of Washington, in the District of Columbia.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same the said Edwin S. Holmes, junior, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, and at the District of Columbia aforesaid, unlawfully did communicate to the said Moses Haas information which was to be contained in said cotton-report to be thereafter issued in said month of June which information had been acquired by said Holmes as aforesaid in the performance of his said official duty.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the District of Columbia aforesaid the said Edwin S. Holmes, junior, afterwards, to wit, on the second day of June, in the year nineteen hundred and five, and before the official issuance and publication of the said last mentioned cotton-crop report, unlawfully did communicate to the said Moses Haas
308 further information which was to be contained in said cotton-crop report and which had been acquired by the said Holmes in the performance of his said official duty.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful con-

spiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price, afterwards, to wit, on the said first and second days of June, in the year nineteen hundred and five, and before the official issuance and publication of the said cotton-crop report, at and within the said City and Southern District of New York unlawfully did receive from the said Moses Haas the information last above mentioned.

6. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price afterwards, to wit, on the second day of June, in the year nineteen hundred and five, and after the said cotton-crop report had been issued in the said month of June, in the same year nineteen hundred and five, and at the said City and Southern District of New York did prepare and send to the said Bureau of Statistics a telegram of the tenor following:

"NEW YORK, *June* 2, 1905.

John Hyde, Wash'n, D. C.:

Your report upon cotton acreage just issued reads as follows:
369 'The bureau report shows a total area planted in cotton up to May 25th to be about 28,120,000 acres a decrease of about 3,510,000 acres or 11.1 percent, from total acreage planted last year.'

Will you kindly telegraph me at my expense immediately whether this means that 28,120,000 acres have actually been planted up to May 25th and that therefore any acreage planted after May 25th will be an increase upon the number of acres reported as planted in your report of today.

THEODORE H. PRICE."

7. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, thereafter, and on the said second day of June, in the year nineteen hundred and five, at the City of Washington, District of Columbia, did cause to be prepared and sent to the said Theodore H. Price at the said City of New York a telegram of the tenor following:

"*Statistics.*

WASHINGTON, D. C., *June* 2, 1905.

Theodore H. Price, 82 Beaver Street, New York.

Report indicates about twenty-eight millions one hundred twenty thousand acres actually planted up to May 25.

HYDE."

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, at the time and place and in manner and form in

this count of this indictment averred, unlawfully did conspire together, and with others, to defraud the United States, and
310 did each do acts to effect the objects of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Fourth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that on the thirty-first day of May, nineteen hundred and five, under the circumstances and conditions in the second count of this indictment set forth and averred pertaining to the organization and existence of the Bureau of Statistics in the Department of Agriculture, and pertaining to the employment of the said officers and employees of the said bureau and department in that count mentioned and their duties in regard to the preparation, issuance, publication and character of the crop reports therein mentioned, including the cotton-crop reports, and pertaining to the custom and practice which prevailed in said bureau with reference to the keeping secret of the information collected by said bureau in the preparation of said crop reports, and information to be contained in said reports, and pertaining to the duty which was imposed upon said officers and employees of the said department and bureau therein mentioned of keeping secret and not divulging any of such information, and pertaining to the employment and duties as associate statistician of said Edwin S. Holmes, junior, as therein set forth, and which are now here again alleged, to have existed
311 on the day in this count above mentioned, and at the District of Columbia aforesaid, the said Edwin S. Holmes, junior, the said Moses Haas and the said Theodore H. Price unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together and with divers other persons to the grand jurors aforesaid unknown to commit an offense against the United States, that is to say, the offense of misconduct on the part of him, the said Edwin S. Holmes, junior, in his said office of associate statistician in the said Department of Agriculture, to be done and committed by him, the said Edwin S. Holmes, junior, in the dishonest and corrupt manner and through and by the means of the dishonest and corrupt scheme and arrangement following, that is to say:

In violation of the duty of him, the said Edwin S. Holmes, junior, to prepare and assist in preparing the said cotton-crop reports truly and accurately from the information as to said crops obtained as aforesaid and without regard to the influence of such reports upon the market price of cotton, the said Edwin S. Holmes, junior, in assisting in preparing the said cotton-crop report to be issued in the month of June then next following, was to cause and procure the said report to be untrue and inaccurate by causing said report to state that there had been planted in cotton throughout the United States a greater number of acres of land and that the condition of the cotton crop was better than would be shown by such report if it had been

based upon the information as to said cotton crop obtained as aforesaid and had been truly and accurately prepared.

312 And in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as associate statistician as aforesaid, in advance of the official issue and publication of the said cotton-crop report to be published in the month of June then next following, and in advance of the time when the matters and information to be contained in said cotton-crop report could lawfully be made public, and to prevent, obstruct and impair the due and orderly administration of the business and affairs of said Department of Agriculture, and to the prejudice of the said United States, he, the said Edwin S. Holmes, junior, was, in so far as in him the power lay, to furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which were to be contained in said report, knowledge of which was as aforesaid acquired by the said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

And the grand jurors aforesaid, upon their oath aforesaid do further present that in pursuance of said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the places and at the times in the third count hereof set forth, the said Theodore H. Price and the said Moses Haas and the said Edwin S. Holmes, junior, respectively did each do and perform the several overt acts averred and alleged in

313 said third count to have been done and performed by the said Theodore H. Price, the said Moses Haas and the said Edwin S. Holmes, junior, in pursuance of, and to effect the object of the conspiracy in said third count set forth and averred.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Theodore H. Price and the said Moses Haas and the said Edwin S. Holmes, junior, at the time and place and in the manner and form in this count aforesaid, unlawfully did conspire together and with others to commit an offense against the United States, and did each do acts to effect the object of said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on and before the fifteenth day of November, nineteen hundred and four, and continuously and at all times between said last mentioned day and the fifth day of July in the year nineteen hundred and five, and on the said last mentioned day, and at the District of Columbia aforesaid, and under the circumstances and conditions in the second count of this indictment set forth and averred pertaining to the organization and existence of the Bureau of Statistics in the Department of Agriculture and pertaining to the employment of the said officers and employees of the said bureau

and department in that count mentioned and their duties in
314 regard to the preparation, issuance, publication and character of the crop reports therein mentioned, including the cotton-crop reports, and pertaining to the custom and practice which prevailed in said bureau with reference to the keeping secret of the information collected by said bureau in the preparation of said crop reports, and information to be contained in said reports, pertaining to the duty which was imposed upon said officers and employees of the said department and bureau therein mentioned of keeping secret and not divulging any of such information, and pertaining to the employment and duties as associate statistician of said Edwin S. Holmes, junior, as therein set forth, and which are now here again alleged to have existed on the days in this count mentioned, the said Edwin S. Holmes, junior, the said Moses Haas and the said Theodore H. Price unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together and with divers other persons to the grand jurors aforesaid unknown to defraud the United States in the dishonest and corrupt manner and through any by the means of the dishonest and corrupt scheme and arrangement following, that is to say:

In violation of the duty of him, the said Edwin S. Holmes, junior, as such associate statistician, honestly and carefully to guard and keep secret all statistics and statistical matter and information, knowledge of which was so as aforesaid acquired by him as such associate statistician, and in advance of the official issue and pub-
315 lication of each of said cotton-crop reports to be thereafter published by said Department of Agriculture as hereinbefore set forth, and in advance of the time and times when the matters and things and other information contained in each of said cotton-crop reports could lawfully be made public, and to prevent, obstruct and impair the due and orderly administration of the business and affairs of said Department of Agriculture, and to the prejudice of the said United States, and to advance the pecuniary interests of them, the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, he, the said Edwin S. Holmes, junior, should and would, in so far as in him the power lay, furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which were to be contained in each of said cotton crop reports knowledge of which so as aforesaid was or would be acquired by him, the said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician; and that whenever any such information should be so unlawfully furnished to the said Price, he, the said Price, would before the official issue and publication of the report containing such information engage in buying or selling cotton, depending upon whether he, the said Price was of the opinion that said cotton-crop report when officially issued and published would cause the market price of cotton to increase or decrease; and that when and
after said cotton-crop report had been officially issued and
316 published, the said Price would sell or buy cotton as the case might be, and would thereby make large gains and profits, and that such gains and profits would thereafter be divided among

them, the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, the manner and proportion of the division of which profits is to the grand jurors aforesaid unknown.

Overt Acts.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the District of Columbia aforesaid, and on the twentieth day of November in the year nineteen hundred and four, and on divers other days between the day last aforesaid and the third day of December in the same year, and before the official issuance and publication of the cotton-crop report which was issued by said Department on the day last aforesaid, the said Edwin S. Holmes, junior, unlawfully and corruptly did communicate to the said Moses Haas statistics and matter and information which were to be contained in the said last mentioned cotton crop report, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of said unlawful con-
317 spiracy, combination, confederation and agreement, and to effect the object thereof, the said Moses Haas on the day and days in the last paragraph aforesaid, and at the city and Southern District of New York, unlawfully and corruptly did communicate to the said Theodore H. Price the information so furnished him by the said Edwin S. Holmes, junior, as aforesaid.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that further in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Theodore H. Price, at the City of New York, in the Southern District of New York, and on and before said third day of December last mentioned and before the official issuance and publication of said last mentioned report, and after he had received as aforesaid said information from the said Moses Haas as to the contents of said last mentioned report, unlawfully did sell large quantities of cotton.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on said third day of December in the year nineteen hundred and four, the said last mentioned cotton crop report was officially issued and published by said Department, and that upon such publication the market price of cotton and as the result of the information contained in said report greatly decreased.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of said unlawful con-
318 spiracy, combination, confederation and agreement, and to effect the object thereof, and at the said City and Southern District of New York, the said Theodore H. Price after said official issuance and publication of said report, did buy great quantities of cotton at such decreased price, and did thereby make large

gains and profits, to-wit, the sum of seven hundred and fifty thousand dollars.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, and at the said city and southern District of New York, the said Theodore Price, on the ninth day of December in said year nineteen hundred and four, unlawfully did give to the said Moses Haas the sum of one hundred and twenty-five thousand dollars of said gains and profits.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in further pursuance of said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the places averred in the third count hereof, to-wit, at the District of Columbia, and at the said city and Southern District of New York respectively, and on the day and days averred in said third count hereof, to-wit, on the said thirty-first day of May and said first and second days of June, respectively, in said year of our Lord nineteen hundred and five, the said Theodore H. Price and the said Moses Haas and the said Edwin S. Holmes, junior, respectively did each do and per-
319 form the several overt acts averred and alleged in the third count of this indictment to have been done and performed by the said Theodore H. Price, the said Moses Haas, and the said Edwin S. Holmes, junior, in pursuance of and to effect the object of the conspiracy in said third count set forth and averred.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Theodore H. Price and the said Moses Haas and the said Edwin S. Holmes, junior, at the time and place and in the manner and form in this count aforesaid, unlawfully did conspire together and with others to defraud the United States, and did each do acts to effect the object of said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Sixth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on and before the fifteenth day of November, in the year of our Lord one thousand nine hundred and four, and continuously and at all times between that day and the fifth day of July in the year nineteen hundred and five, and on said last mentioned day, and at the District of Columbia aforesaid, and under the circumstances and conditions in the second count of this indictment set forth and averred pertaining to the organization and exist-
320 ence of the Bureau of Statistics in the Department of Agriculture, and pertaining to the employment of said officers and employees of the said Bureau and Department in that count mentioned, and their duties in regard to the preparation, issuance, publication and character of the crop reports therein mentioned, including the cotton-crop reports, and pertaining to the

custom and practice which prevailed in said Bureau with reference to the keeping secret of the information collected by said Bureau in the preparation of said crop reports, and information to be contained in said reports, and pertaining to the duty which was imposed upon said officers and employees of the said Department and Bureau therein mentioned of keeping secret and not divulging any of such information, and pertaining to the employment and duties as associate statistician of said Edwin S. Holmes, junior, as therein set forth, and all of which are now here again alleged to have existed on the days in this count mentioned, the said Edwin S. Holmes, Junior, the said Moses Haas and the said Theodore H. Price, unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together and with divers other persons to the Grand Jurors aforesaid unknown, to commit an offense against the United States, that is to say, the offense of misconduct on the part of him, the said Edwin S. Holmes, Junior, in his said office of associate statistician in the said Department of Agriculture, to be done and committed by him, the said Edwin S. Holmes, junior, in the dishonest
321 and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement following, that is to say:

In violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician, honestly and carefully to guard and keep secret all statistics and statistical matter and information, knowledge of which was so as aforesaid acquired by him as such associate statistician, and in advance of the official issuance and publication of each of said cotton-crop reports to be thereafter published by said Department of Agriculture as hereinbefore set forth, and in advance of the time and times when the matters and things and other information contained in each of said cotton-crop reports could lawfully be made public, and to prevent, obstruct and impair the due and orderly administration of the business and affairs of said Department of Agriculture, and to the prejudice of the said United States, and to advance the pecuniary interests of them, the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, he, the said Edwin S. Holmes, junior, should and would, in so far as in him the power lay, furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which were to be contained in each of said cotton crop reports knowledge of which so as aforesaid was or would be acquired by him, the said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician; and that whenever any such information should be so unlawfully furnished to the said
322 Price, he, the said Price, would before the official issue and publication of the report containing such information engage in buying or selling cotton, depending upon whether he, the said Price, was of the opinion that said cotton-crop report when officially issued and published would cause the market price of cotton to increase or decrease; and that when and after said cotton-crop report had been officially issued and published, the said Price would sell or buy cotton as the case might be, and would thereby

make large gains and profits; and that such gains and profits would thereafter be divided among them, the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, the manner and proportion of the division of which profits is to the Grand Jurors aforesaid unknown.

Overt Acts.

1. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the District of Columbia aforesaid, and on the twentieth day of November in the year nineteen hundred and four, and on divers other days between the day last aforesaid and the third day of December in the same year, and before the official issuance and publication of the cotton-crop report which was issued by said Department on the day last aforesaid, the said Edwin S.
323 Holmes, junior, unlawfully and corruptly did communicate to the said Moses Haas statistics and matter and information which were to be contained in said last mentioned cotton-crop report, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

2. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Moses Haas on the day and days in the last paragraph aforesaid, and at the city and Southern District of New York, unlawfully and corruptly did communicate to the said Theodore H. Price the information so furnished to him by said Edwin S. Holmes, junior, as aforesaid.

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Theodore H. Price, at the city of New York, in the Southern District of New York, and on and before said third day of December last mentioned and before the official issuance and publication of said last mentioned report, and after he had received as aforesaid said information from the said Moses Haas as to the contents of said last mentioned report, unlawfully did sell large quantities of cotton.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that on said third day of December
324 in the year of our Lord one thousand nine hundred and four, the said last mentioned cotton crop report was officially issued and published by said Department, and that upon such publication the market price of cotton and as the result of the information contained in said report greatly decreased.

4. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, and at the said city and Southern District of New York, the said Theodore H. Price, after said official issuance

and publication of said report, did buy great quantities of cotton at such decreased price, and did thereby make large gains and profits, to wit, the sum of seven hundred and fifty thousand dollars.

5. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, and at the said city and Southern District of New York, the said Theodore H. Price, on the ninth day of December in said year, nineteen hundred and four, unlawfully did give to the said Moses Haas the sum of one hundred and twenty-five thousand dollars of said gains and profits.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that in further pursuance of said last
325 mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the places averred in the third count hereof, to wit, at the said District of Columbia, and at the said city and Southern District of New York respectively, and on the day and days averred in said third count hereof, to wit, on the said thirty-first day of May and said first and second days of June respectively, in said year of our Lord nineteen hundred and five, the said Theodore H. Price and the said Moses Haas and the said Edwin S. Holmes, junior, respectively did each do and perform the several overt acts averred and alleged in the third count of this indictment to have been done and performed by the said Theodore H. Price, the said Moses Haas, and the said Edwin S. Holmes, junior, in pursuance of and to effect the object of the conspiracy in said third count set forth and averred.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say that the said Theodore H. Price, and the said Moses Haas and the said Edwin S. Holmes, junior, at the time and place and in the manner and form in this count aforesaid, unlawfully did conspire together and with others to commit an offense against the United States, and did each do acts to effect the object of said conspiracy; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case
326 made and provided.

Seventh Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that on the thirty-first day of May, nineteen hundred and five, under the circumstances and conditions in the second count of this indictment set forth and averred pertaining to the organization and existence of the Bureau of Statistics in the Department of Agriculture, and pertaining to the employment of the said officers and employees of the said bureau and department in that count mentioned and their duties in regard to the preparation, issuance, publication and character of the crop reports therein mentioned, including the cotton-crop reports, and pertaining to the custom and practice which prevailed in the said bureau with reference to the keeping secret of the information collected by said bureau

in the preparation of said crop reports, and information to be contained in said reports, and pertaining to the duty which was imposed upon said officers and employees of the said department and bureau therein mentioned of keeping secret and not divulging any of such information, and pertaining to the employment and duties as associate statistician of said Edwin S. Holmes, junior, as therein set forth, and all of which are now here again alleged to have existed on the day in this count above mentioned, at the District of Columbia aforesaid, the said Edwin S. Holmes, junior, the said Moses Haas and the said Theodore H. Price unlawfully, corruptly
327 and fraudulently did conspire, combine, confederate and agree together and with divers other persons to the grand jurors aforesaid unknown to defraud the United States in the dishonest and corrupt manner and through and by the means of the dishonest and corrupt scheme and arrangement following, that is to say:

In violation of the duty of him, the said Edwin S. Holmes, junior, to prepare and assist in preparing the said cotton-crop reports truly and accurately from the information as to said crops obtained as aforesaid and without regard to the influence of such reports upon the market price of cotton, the said Edwin S. Holmes, junior, in assisting in preparing the said cotton-crop report to be issued in the month of June then next following, was to cause and procure the said report to be untrue and inaccurate by causing said report to state that there had been planted in cotton throughout the United States a greater number of acres of land than would be shown by such report if it had been based upon the information as to said cotton crop obtained as aforesaid and had been truly and accurately prepared; and he, the said Edwin S. Holmes, junior, was to cause and procure the said last mentioned report to purport to show the number of acres of land which had been actually planted in cotton only up to the twenty-fifth day of the month of May preceding the issuance of such report; and as soon as the said report should be officially issued and published the said Theodore H. Price
328 was to telegraph to the said Bureau of Statistics asking whether said report included only the number of acres actually planted up to said twenty-fifth day of May, or whether it included also the number of acres which it was estimated would be thereafter planted in cotton; and that said Edwin S. Holmes was to cause a reply to be sent to the said Theodore H. Price that the report included only the number of acres actually planted up to the day last mentioned.

And in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as associate statistician as aforesaid, and in advance of the official issue and publication of the said last mentioned cotton-crop report, and in advance of the time when the matters and information to be contained in said cotton-crop report could lawfully be made public, and to prevent, obstruct and impair the due and orderly administration of the business and

affairs of said Department of Agriculture, and to the prejudice of the said United States, he, the said Edwin S. Holmes, junior, was, in so far as in him the power lay, to furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which were to be contained in said report, knowledge of which was as aforesaid acquired by the said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

329 *Overt Acts.*

And the grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the respective places averred in the third count hereof, to-wit, at the said District of Columbia and at the said city and Southern District of New York, and on the day and respective days averred in said third count hereof, to-wit, on the said thirty-first day of May and on the said first and second days of June in said year of our Lord nineteen hundred and five, the said Theodore H. Price and the said Moses Haas and the said Edwin S. Holmes, junior, respectively did each do and perform the several overt acts averred and alleged in the third count of this indictment to have been done and performed by the said Theodore H. Price, the said Moses Haas, and the said Edwin S. Holmes, junior, in pursuance of and to effect the object of the conspiracy in said third count set forth and averred.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and at the District of Columbia aforesaid, and on the second day of June in the year of our Lord nineteen hundred and five, the said Moses Haas did give to the said Edwin S. Holmes, junior, the sum of one thousand dollars.

330 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, and at the said city and Southern District of New York, on the twenty-third day of May in the year of our Lord nineteen hundred and eight, the said Theodore H. Price unlawfully did promise to give to the said Moses Haas a large sum of money, the amount of which is to the grand jurors aforesaid unknown.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of said last mentioned conspiracy, combination, confederation and agreement, and to effect the object thereof, and at the said city and Southern District of New York, and on the twenty-fifth day of May in the year last aforesaid, the said Theodore H. Price unlawfully did give to the said Moses Haas a large sum of money, the amount of which is to the grand jurors aforesaid unknown.

And so the grand jurors aforesaid, upon their oath aforesaid, do

say that the said Theodore H. Price and the said Moses Haas and the said Edwin S. Holmes, junior, at the time and place and in the manner and form in this count aforesaid, unlawfully did conspire together and with others to defraud the United States, and did each do acts to effect the object of said conspiracy; against the peace and dignity of the said United States, and contrary to the form
331 of the statute of the same in such case made and provided.

Eighth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that on the thirty-first day of May, nineteen hundred and five, under the circumstances and conditions in the second count of this indictment set forth and averred pertaining to the organization and existence of the Bureau of Statistics in the Department of Agriculture, and pertaining to the employment of the said officers and employees of the said Bureau and Department in that count mentioned and their duties in regard to the preparation, issuance, publication and character of the crop reports therein mentioned, including the cotton-crop reports, and pertaining to the custom and practice which prevailed in said Bureau with reference to the keeping secret of the information collected by said Bureau in the preparation of said crop reports, and information to be contained in said reports, and pertaining to the duty which was imposed upon said officers and employees of the said Department and Bureau therein mentioned of keeping secret and not divulging any of such information, and pertaining to the employment and duties as associate statistician of said Edwin S. Holmes, junior, as therein set forth, and all of which are now here again alleged to have existed on the day in this count above mentioned, and at the District of Columbia aforesaid, the said Edwin S. Holmes, junior, the said
332 Moses Haas and the said Theodore H. Price unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together and with divers other persons to the Grand Jurors aforesaid unknown, to commit an offense against the United States, that is to say, the offense of misconduct on the part of him, the said Edwin S. Holmes, junior, in his said office of associate statistician in the said Department of Agriculture, to be done and committed by him, the said Edwin S. Holmes, junior, in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement following, that is to say:

In violation of the duty of him, the said Edwin S. Holmes, junior, to prepare and assist in preparing the said cotton-crop reports truly and accurately from the information as to said crops obtained as aforesaid and without regard to the influence of such reports upon the market price of cotton, the said Edwin S. Holmes, junior, in assisting in preparing the said cotton-crop report to be issued in the month of June then next following, was to cause and procure the said report to be untrue and inaccurate by causing said report to state that there had been planted in cotton throughout the United States a greater number of acres of land than would be shown by

such report if it had been based upon the information as to said cotton crop obtained as aforesaid and had been truly and accurately prepared; and he, the said Edwin S. Holmes, junior, was to
333 cause and procure the said last mentioned report to purport to show the number of acres of land which had been actually planted in cotton only up to the twenty-fifth day of the month of May preceding the issuance of such report; and as soon as the said report should be officially issued and published the said Theodore H. Price was to telegraph to the said Bureau of Statistics asking whether said report included only the number of acres actually planted up to said twenty-fifth day of May, or whether it included also the number of acres which it was estimated would be thereafter planted in cotton; and that the said Edwin S. Holmes, junior, was to cause a reply to be sent to the said Theodore H. Price that the report included only the number of acres actually planted up to the day last mentioned.

And in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as associate statistician as aforesaid, and in advance of the official issue and publication of the said last mentioned cotton-crop report, and in advance of the time when the matters and information to be contained in said cotton-crop report could lawfully be made public, and to prevent, obstruct and impair the due and orderly administration of the business and affairs of said Department of Agriculture, and to the prejudice of the said United States, he, the said Edwin S.
334 Holmes, junior, was, in so far as in him the power lay, to furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which were to be contained in said report, knowledge of which was as aforesaid acquired by the said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

And the Grand Jurors, upon their oath aforesaid, do further present, that in pursuance of said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the respective places averred in the third count hereof, to-wit, at the said District of Columbia, and at the said city and Southern District of New York and on the day and respective days averred in said third count hereof, to wit, on the said thirty-first day of May, and on said first and second days of June, in said year of our Lord nineteen hundred and five, the said Theodore H. Price and the said Moses Haas and the said Edwin S. Holmes, junior, respectively did each do and perform the several overt acts averred and alleged in the third count of this indictment to have been done and performed by the said Theodore H. Price, the said Moses Haas and the said Edwin S. Holmes, junior, in pursuance of and to effect the object of the conspiracy in said third court set forth and averred.

335 And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement in

this count averred, and to effect the object thereof, and at the District of Columbia aforesaid, and on the second day of June, in the year of our Lord nineteen hundred and five, the said Moses Haas did give to the said Edwin S. Holmes, junior, the sum of one thousand dollars.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, and at the said city and Southern District of New York, on the twenty-third day of May, in the year of our Lord nineteen hundred and eight, the said Theodore H. Price unlawfully did promise to give to the said Moses Haas a large sum of money, the amount of which is to the Grand Jurors aforesaid unknown.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of said last mentioned conspiracy, combination, confederation and agreement, and to effect the object thereof, and at the said city and Southern District of New York, and on the twenty-fifth day of May in the year last aforesaid, the said Theodore H. Price unlawfully did give to the said Moses Haas a large sum of money, the amount of which is to the Grand Jurors aforesaid unknown.

336 And so the Grand Jurors aforesaid, upon their oath aforesaid, do say that the said Theodore H. Price and the said Moses Haas and the said Edwin S. Holmes, junior, at the time and place and in the manner and form in this count aforesaid unlawfully did conspire together, and with others, to commit an offense against the United States, and did each do acts to effect the object of said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case and provided.

DANIEL W. BAKER,
Attorney for the United States in and for the District of Columbia.

(Endorsed:) No. 26088. United States vs. Theodore H. Price, Moses Haas and Frederick A. Peckham. Conspiracy to Defraud the United States and to Commit an offense against the United States. Witnesses: Andrew Parker, Sam'l L. Baulsir, Wm. L. Lanning, Nathaniel Murray, Louis C. Van Riper, Herbert H. Smith, Richard A. Spring, Victor Armstead, Russell Coats, Walter Mayer. A true bill. E. J. Walsh, Foreman.

337 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 30" day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk*.

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30" day of October, 1908.

(Signed) HARRY M. CLABAUGH. [L. S.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30 day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk*.

338 In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it Remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

339 Filed in Open Court May 29, 1908. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1908.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States, on and before the third first day of May, in the year nineteen hundred and five, there was, and from thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the

time and times aforesaid the said bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said bureau was under the management of the said associate statistician, who acted in the place
340 and stead of said statistician as chief of said bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said bureau, was charged with the duty of preparing during certain months in each year certain reports upon the condition of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published.

That each of said reports was prepared by the said statistician or the said associate statistician in the manner aforesaid, from certain information collected by the said bureau from divers sources approved by the said bureau; amongst others being certain correspondents of the said Bureau of Statistics residing in those parts of the United States where were grown the particular crops upon
341 which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said bureau, known as Statistical Agents, and certain other expert employees of the said bureau, whose duty it was to travel throughout the United States and ascertain the conditions of the said crops.

And that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said department, and

relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were
342 prepared at great expense to the said United States and were to be fair, impartial, correct and accurate; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture, established and sanctioned by the said Secretary, under which the giving out to the public or any information collected by the said Bureau of Statistics or its said officers or its said employees, to be used in the preparation of or to be contained in any of said crop reports, was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published. And that during the time and times aforesaid it was the duty of the said statistician and of the said associate statistician and said other officials and employees aforesaid of the said Bureau of Statistics to prepare a true and accurate report upon each of the said crops, from the information as to said crops obtained as aforesaid, and without regard to the influence which any such report might have upon the market price of the crop therein mentioned.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and
343 employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matters and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employees of the said Bureau of Statistics, and in the absence of said statistician, so prepared by the said asso-

ciate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture as aforesaid, was a report upon the cotton crop of the United States, which became known as and was called the cotton crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of
344 each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November, in the year nineteen hundred and three, and thence continuously until the ninth day of June, in the year nineteen hundred and five, one Edwin S. Holmes, junior, held and occupied the office of, and was, such associate statistician in the said Bureau of Statistics in the Department of Agriculture, and as such was an officer of the United States and a person acting for and on behalf of the United States in an official function under and by authority of the said department and bureau, and as such associate statistician the said Edwin S. Holmes, junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports, including said cotton crop report, and, in the absence of the said statistician from his office, the said Edwin S. Holmes, junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employees of said bureau as aforesaid, all of the said crop reports, including the said cotton crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports, including said cotton crop reports, and, in the ab-
345 sence of said the statistician, in the performance of his duties in preparing said crop reports, including the said cotton crop reports, he, the said Edwin S. Holmes, junior, did, before the official approval and issuance and publication of each of said crop reports, including the said cotton crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton crop reports, were prepared, and of the matters and things and other information which were to be contained in each of said crop reports, including said cotton crop reports.

And that during the period last aforesaid it was the duty of said Edwin S. Holmes, junior, as such associate statistician, whenever he prepared or assisted in preparing any of said reports, to prepare and assist in preparing a true and accurate report, from the information as to said crops obtained as aforesaid, and without regard to the effect which such reports might have upon the market price of the crop therein mentioned, and honestly and *a*ccefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter and information from which said crop reports, including said cotton crop reports, were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton crop reports, knowledge of

which was so, as aforesaid, acquired by him, the said Edwin S. Holmes, junior, as such associate statistician, until the said reports had been prepared, officially approved and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes,
346 junior, as such associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau of Statistics any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so, as aforesaid, acquired by him, except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises aforesaid, insofar as they were then existent, were known to a certain Theodore H. Price and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth.

That on the thirty-first day of May, in the year nineteen hundred and five, at the City of Washington, in the District of Columbia, one Moses Haas and one Theodore H. Price unlawfully did conspire, combine, confederate and agree together to commit an offense against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States, and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, junior, to do certain acts in violation of his lawful duty; that is to say,
347 to induce him, the said Edwin S. Holmes, junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton crop report, which was to be issued, as hereinbefore set forth, in the month of June next ensuing, and in advance of the time when the matter and information contained in such cotton crop report could lawfully be made public, to furnish, insofar as in him the power lay, to the said Moses Haas and the said Theodore H. Price, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

Overt Acts.

1. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price and Moses Haas afterwards, to

wit, on the thirty-first day of May, in the year nineteen hundred and five, at the said city of New York, and in the said Southern District of New York, unlawfully did meet together to confer concerning the said unlawful conspiracy, combination, confederation and agreement.

348 2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said city of New York, in the said Southern District of New York, to the city of Washington, in the District of Columbia.

3. And the grand jurors, aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, on the said first day of June, in the year nineteen hundred and five, and at the city of Washington, in the District of Columbia aforesaid, the said Moses Haas unlawfully did promise and offer to give to the said Edwin S. Holmes, junior, who was then, as aforesaid, an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, junior, in violation of the said duty of secrecy of him, the said Edwin S. Holmes, junior, as hereinbefore set forth, and in advance of the official issue and publication of the said cotton crop report, which was to be issued in the said month of June, to furnish to him, the said Moses Haas, and to the said Theodore H.

349 Price, the statistics, matter and information which were to be contained in the said last mentioned report.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, at the city of Washington, in the District of Columbia aforesaid, unlawfully did receive from the said Edwin S. Holmes, junior, information which was to be contained in said cotton crop report, which was to be issued in said month of June, which information had been acquired by the said department and bureau in the manner hereinabove set forth.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, at the city of Washington, in the District of Columbia aforesaid, on the second day of June, in the year nineteen hundred and five, and before the official issuance and publication of the said cotton crop report, the said Moses Haas unlawfully

350 received from the said Edwin S. Holmes, junior, further infor-

nation which was to be contained in said cotton crop report which was to be issued in said month of June, and which information had been acquired by the said department and bureau in the manner hereinabove set forth.

350 6. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price, on the said first and second days of June, in the year nineteen hundred and five, and before the official issuance and publication of the said cotton crop report, at and within the said city and Southern District of New York, unlawfully did receive from the said Moses Haas the information last above mentioned.

7. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, on the said second day of June, in the year nineteen hundred and five, in the District of Columbia aforesaid, unlawfully did give to the said Edwin S. Holmes, junior, the sum of one thousand dollars.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the same Theodore H. Price and Moses Haas, at the time and place and in the manner and form aforesaid, unlawfully did conspire together, to commit an offense against the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

351 *Second Count.*

And the grand jurors aforesaid, upon their oath aforesaid, do further present that on the thirty-first day of May, nineteen hundred and five, under the circumstances and conditions in the first count of this indictment set forth and averred, pertaining to the organization and existence of the Bureau of Statistics in the Department of Agriculture, and pertaining to the employment of the said officers and employees of the said bureau and department in that count mentioned, and their duties in regard to the preparation, issuance, publication and character of the crop reports therein mentioned, including the cotton-crop reports, and pertaining to the custom and practice which prevailed in said bureau with reference to the keeping secret of the information collected by said bureau in the preparation of said crop reports, and information to be contained in said reports, and pertaining to the duty which was imposed upon said officers and employees of the said department and bureau therein mentioned of keeping secret and not divulging any of such information, and pertaining to the employment and duties as associate statistician of said Edwin S. Holmes, junior, as therein set forth, and which are now here again alleged to have existed on the day in this count above mentioned, and while the said Edwin S. Holmes, junior, was, as averred in said first count of this indictment, such officer of the United States and a person acting for and on behalf of the

United States in an official function under and by authority
352 of the said department and bureau, and at the said District of Columbia, the said Moses Haas and the said Theodore H. Price unlawfully did conspire, combine, confederate and agree together to commit an offense against the United States, that is to say, the offense of promising, offering and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, junior, to do certain acts in violation of his lawful duty; that is to say, to induce him, the said Edwin S. Holmes, junior, in violation of the duty of him, the said Edwin S. Holmes, junior, to prepare and assist in preparing the said cotton-crop reports truly and accurately from the information as to said crop obtained as aforesaid, and without regard to the influence of such reports upon the market price of cotton, unlawfully and corruptly, in assisting in preparing the said cotton crop report which was to be issued in the month of June then next following, to cause and procure said last mentioned report to be untrue and inaccurate by causing such report to state that there had been planted in cotton throughout the United States a greater number of acres of land, and that the condition of the said cotton crop was better than would be shown by such report if it had been based upon the infor-
353 mation as to said cotton crop obtained as aforesaid, and had been truly and accurately prepared; and further to induce him, the said Edwin S. Holmes, junior, in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as associate statistician as aforesaid, and in advance of the official issue and publication of the said last mentioned report, and in advance of the time when the matters and information to be contained in said last mentioned cotton-crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Theodore H. Price, the statistics, matter and information which were to be contained in the said last mentioned report, knowledge of which was, as aforesaid, acquired by the said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that in pursuance of said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the places and at the times in the first count hereof set forth, the said Theodore H. Price and the said Moses Haas each did do and perform the several overt acts averred and alleged in the said first count to have been done and performed by the said Moses Haas and the said Theodore H. Price

in pursuance of and to effect the object of the conspiracy in the said first count averred.

354 And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Moses Haas and the said Theodore H. Price, at the time and place and in the manner and form in this count aforesaid, unlawfully did conspire together to commit an offense against the United States, and did each do acts to effect the object of said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

DANIEL W. BAKER,
Attorney of the United States in and of the District of Columbia.

(Endorsed:) No. 26089. United States vs. Theodore H. Price and Moses Haas. Conspiracy to Commit Offense against the United States. Witnesses: Andrew Parker, Sam'l Baulsir, Wm. L. Lanning, Nathaniel Murray, Louis C. Van Riper, Walter Mayer, Herbert H. Smith, Richard A. Springs, Victor Armstead, Russell R. Coats, Walter Mayer. A true bill. E. J. Walsh, Foreman.

355 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 30" day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30" day of October, 1908.

(Signed) HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30" day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk.*

355 UNITED STATES OF AMERICA,
Southern District of New York:

UNITED STATES
vs.
MOSES HAAS and THEODORE H. PRICE.

UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

Copy of Stenographer's Minutes. Before John A. Shields, Esq., U. S. Commissioner.

NEW YORK, *November 4th-7th*, 1908.

357 Before John A. Shields, Esq., United States Commissioner for the Southern District of New York.

Complaint on Removal.

UNITED STATES
vs.
MOSES HAAS and THEODORE H. PRICE.

UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

R. S. Sec. 1014, 5440.

NEW YORK, *November 4th*, 1908.

Appearances.

G. H. Dorr, Esq., for the Government.
Jesse C. Adkins, Esq., for the Government.
Nash Rockwood, Esq., for the defendant Haas.
Max D. Steuer, Esq., for the defendant Haas.

The Government moved for a hearing on the complaint as to the defendant Haas.

358 Mr. DORR: There are here two complaints; I note, Mr. Commissioner, that in your minutes you have described the case as United States against Haas, two cases; do I take it that you grant a motion to consolidate the two complaints?

Mr. ROCKWOOD: I haven't heard any such motion.

The COMMISSIONER: You said two cases and that is the way I put it down.

Mr. DORR: Then I move to consolidate the two complaints now

standing against Moses Haas, the two complaints on removal to the District of Columbia.

Mr. ROCKWOOD: Objected to as improper on the ground that the Court is without jurisdiction to consolidate the two complaints; each will stand upon its own state of facts, which are separate. Unless it is shown by the District Attorney affirmatively to be a joinder of facts and a joinder of allegations, which has not been done, that motion is improper and premature.

359 Mr. DORR: These complaints both charge that Haas committed a crime.

Mr. ROCKWOOD: May I interrupt you? Furthermore that the indictments charge separate and distinct crimes, or attempt to allege separate and distinct crimes, and each must rest upon its own state of facts and upon its own particular law.

Mr. DORR: There are two complaints outstanding for the removal of Haas to the District of Columbia, crimes of the same kind and same class. Now the whole object provided under section 1014 is to remove a person charged with crime to the district where he is to be tried. Now these two complaints contain matter which might all be put in one complaint as well and there is no reason that I can see why they should not be heard and tried together.

Mr. STEUER: The objection to this motion is this: That on each of these separate removal complaints, if Haas is removed on one of them and it afterwards develops in the District of Columbia that that indictment was quashed—Mr. Dorr is all wrong when he says that under 1014 the object is to remove the defendant to another jurisdiction to be tried; the object is to remove him to try him on the indictment on which he is removed. In other words, they

360 cannot get Haas into the District of Columbia charging him here with the crimes of murder and larceny and then try him in the District of Columbia on this removal order for the crime alleged, because you would have to have a separate indictment issued on the crime of murder and you would have to give him an opportunity Mr. Atkin to leave that jurisdiction in peace, just as you do in extradition.

Mr. ATKIN: There are no decisions on that.

Mr. STEUER: You will get a decision here on this question.

The COMMISSIONER: You had better put in a brief tomorrow and serve it on the District Attorney, to-morrow or Friday.

Mr. STEUER: I have no objection to doing that, but when I had——

Mr. ATKIN: That is a question that I may suggest will arise——

Mr. STEUER: You are moving to consolidate two complaints; there are two other complaints for removal on two separate indictments.

The COMMISSIONER: Suppose one is for larceny and the other for conspiracy, and you come over there and you con-

361 solidate them; suppose they discharge the conspiracy indictment and are held on the larceny indictment? There is one thing certain: he ought to be tried on the one on which he is removed.

Mr. DORR: That is not in issue in this complaint; we are trying to remove him for trial for various charges which have been made against him there in the various indictments.

Mr. STEUER: The moment you unite the two you make them one; there is only one obligation. My object is not to convince you, but to convince the Commissioner. Now if you unite these two proceedings there is only one proceeding pending before you. There are two indictments pending in Washington. Whether you grant this motion or not, the objection that I make is this: If you unite these two proceedings and Haas is landed in Washington and it turns out that one indictment is bad and that therefore he is not to be put on trial, they have got him there on the other indictment on which we might satisfy you here that he should never be removed. That is my objection.

The COMMISSIONER: I suppose that they make the motion to consolidate them only on the ground that it will be more con-
362 venient here and save time for all of them; in other words you could meet the thing here.

Mr. STEUER: I don't think Judge Rockwood would object that the testimony you take on one proceeding should be the same testimony in the other, but we object to the consolidation of the proceeding, not to the inconvenience of having two.

Mr. DORR: If that is your objection, I have no objection——

The COMMISSIONER: We can hear the two at the same time.

Mr. STEUER: Yes; but there is an objection to a consolidation.

Mr. ROCKWOOD: There is no objection to hearing them both at once, but it is to the consolidation.

Mr. DORR: I don't think there is the slightest difference in the situation, but if you think there is, all right.

Mr. ROCKWOOD: The Court rules that there shall be no consolidation of the indictments, but that the evidence taken shall apply to both proceedings in so far as the same is applicable, to which the defendant Haas duly excepts.

Mr. Rockwood admits the identity of Moses Haas as the person named in the indictment mentioned in the complaints.

363 Mr. DORR: I offer in evidence authenticated copies of two indictments, Nos. 26088 and 26089, being indictments found in the District of Columbia against Theodore H. Price, Moses Haas and Edwin S. Holmes, Jr., and against Theodore H. Price and Moses Haas respectively.

Mr. ROCKWOOD: We object to those indictments and each of them upon the ground that they are incompetent, immaterial and irrelevant, not sufficiently authenticated; that they do not charge the defendant Haas with the commission of any statutory or other crime, and that they are not sufficient indictments, either in form or in substance, upon which removal proceedings can be based. Furthermore, that they are not exemplified in the manner required by the statute; that it does not appear that all the names of witnesses who appeared before the Federal Grand Jury, which returned the indictment, are endorsed upon each thereof; that the indict-

ments do not bear the original signature of the foreman of the Grand Jury.

Mr. DORR: The copies do not?

Mr. ROCKWOOD: The copies do not bear the original signature of the person who was the foreman of the Grand Jury which returned the indictments. That the indictments at best charge the
364 defendants with a violation of a rule of the Department of Agriculture and not with the commission of a statutory crime, and contain sufficient allegations upon which the Grand Jury are authorized to return an indictment. Now, of course your Honor will have to hear argument upon that, and that goes to the merit of the whole proceeding.

The COMMISSIONER: I will hear you now, or I will overrule your objection and give you an exception and hear you at a later stage of the case as to that.

Mr. Rockwood having asked an adjournment on the ground of the illness of Delancey Nicoll, Esq., and one of the witnesses subpœnaed having asked the intention of counsel as to the expenses, traveling fees, etc., the commissioner stated:

The COMMISSIONER: As I understand, these witnesses are subpœnaed on the part of the defense, and the defense asks an adjournment, and they have to see that the witnesses are here on the adjourned day, and their expenses should be paid by the defense.

Mr. FULLER: We will pay for the witnesses to come back. We do not expect to pay for the maintenance of the witnesses in New York during all that time, but we will pay for their return from Washington.

365 Mr. ATKIN: Their two traveling fees and their per diem?

Mr. FULLER: We will stand for that, of course. We will do right about that.

Mr. ROCKWOOD: I want to add another objection. Furthermore——

The COMMISSIONER: The witnesses subpœnaed on behalf of the defense will be here on Saturday at 10:30 without further subpœna, their fees to be paid.

Mr. ATKIN: That includes the mileage for the two trips?

The COMMISSIONER: Yes; mileage to and fro and $1.50 a day, and they are to be here on Saturday at 10:30 without further subpœna, except that their fare must be paid.

Mr. ROCKWOOD: Furthermore, that the facts set forth in the indictment, if it could be held that they constituted an offence, said offence has been outlawed by the operation of the Statute of Limitations. I have to introduce documentary evidence to show that other indictments were found for the same offence three years previous; the offence is charged May 31, 1905. At last it is a matter of two days with the Government. Now the Government has pre-
366 viously found other indictments based upon practically these same states of facts, which indictments we will introduce in evidence before your Honor and upon which we base our——

The COMMISSIONER: The indictment itself was found within the Statute of Limitations, wasn't it?

Mr. ROCKWOOD: On some of the counts I think. I don't want to mislead the Court in any way. I will submit a memorandum on that.

Mr. ATKIN: I think in all of them you will find there are overt acts charged within the Statute of Limitations.

Mr. DORR: They are a few days less than three years.

Mr. ROCKWOOD: Our contention is that the conspiracy was complete when it was entered into and the single overt act committed, and the argument on this will better be addressed to your Honor after our documentary proof is in, as you cannot decide it now upon this hearing.

Mr. ATKIN: The indictment on its face charges in each count a conspiracy was formed.

The COMMISSIONER: I will overrule the objection and give them an exception, and later hear them on the whole thing.

367 Mr. ATKIN: They made a lot of objections to the exemplification and that sort of thing.

The COMMISSIONER: I will overrule that. They have been properly certified as far as I can see.

Mr. DORR: I would like to have the argument on that. If they are not properly authenticated we need not go any further.

Mr. ROCKWOOD: I will reserve my argument upon that question until I make my final motion, but in answer to your Honor's question as to the authentication, I submit your Honor the indictments must bear the signature of the foreman who presided at the term of the Grand Jury.

The COMMISSIONER: On the copy of the indictment?

Mr. ROCKWOOD: Yes; the original signature of the foreman on the copy.

The COMMISSIONER: The original indictment has got to be in the file of the Court.

Mr. ROCKWOOD: Has your Honor overruled that objection?

The COMMISSIONER: Yes.

Mr. ROCKWOOD: And we except.

368 The COMMISSIONER: Your point is that on that certified copy there should be the original signature of the foreman of the Grand Jury?

Mr. ROCKWOOD: Yes.

The COMMISSIONER: I overrule that.

Exception.

Mr. ROCKWOOD: We further urge to your Honor that there is no proof before your Honor that J. R. Young is the clerk of the District Court of the District of Columbia, which must be given to your Honor before a proper authentication is before you. Further that there is no evidence before your Honor that H. M. Clabaugh is the Chief Justice of the Supreme Court of the District of Columbia.

The COMMISSIONER: Your first point—here Young has signed this authentication and here is the Chief Justice.

Mr. ATKIN: Certifying the Justice's name.

Mr. ROCKWOOD: He does not certify that Young is the chief clerk of the Court.

The COMMISSIONER: Here it says I hereby certify it to be in due form.

Mr. ROCKWOOD: But not that he is the clerk.

The COMMISSIONER: I overrule it.

Mr. ROCKWOOD: And I except to that. And furthermore that the objections made are made to each indictment.

369 Objection overruled. Exception.

Indictment #26088 received in evidence and marked Exhibit No. 1 of this date.

Indictment No. 26089 received in evidence and marked Exhibit No. 2 of this date.

Mr. DORR: I offer authenticated copies of two indictments found in the District of Columbia, Nos. 26086 and 26087 respectively, United States against Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas, indictment #26086 charging conspiracy to defraud the United States, indictment #26087 charging a conspiracy to commit offences against the United States.

Mr. ROCKWOOD: I make the same objections to those two indictments that I made to the other two indictments; and I add this objection to the previous one, and also to this one: That the defendant Haas on the indictment found in the District of

370 Columbia, based practically upon the same state of facts set forth in these indictments, has been previously arrested and discharged by United States Commissioner Ridgway, and by United States Judge Holt, and that as to the defendant Haas there has been an adjudication in his favor, so that the question of his commission of the crime is in these proceedings res adjudicata, and I state to the Court that I will offer in evidence the documentary proof at the proper time of the proceedings before Commissioner Ridgway and United States Judge Holt, and I therefore ask the Court to reserve its ruling upon this matter until I have supplied the documentary evidence in the orderly course of this proceeding.

Mr. DORR: I suggest that we dispose of the questions of law today.

371 The COMMISSIONER: I will make the rule to hear at the end of the case.

Mr. ROCKWOOD: I am here without my counsel, who is ill, and I have asked for an adjournment and I have raised my objections.

The COMMISSIONER: They may just as well be passed on Saturday morning.

Indictment #26086 marked Exhibit 3 of this date.

Indictment #26087 marked Exhibit 4 of this date.

Mr. ROCKWOOD: Does your Honor rule that you have no power to go into the details of how the indictments were found?

The COMMISSIONER: No. The Supreme Court of the United States has decided that I think in the case of Henkel and Fowler, decided in that case about a technicality as raised as to the presentment of certificates and things of that kind.

Mr. ROCKWOOD: On that point we may submit some authorities to your Honor when the time comes.

The COMMISSIONER: Am I right about that?
Mr. DORR: I think you are.

372 Hearing adjourned to Saturday, November 7th, 1908, at 10:30 o'clock A. M.

373 UNITED STATES
vs.
MOSES HAAS & Others.

NEW YORK, *November 7th*, 1908.

Met pursuant to adjournment.

Appearances.

The commissioner and counsel as before.

Mr. DORR: I offer the bench warrant in evidence.
Mr. ROCKWOOD: I want to make a motion before Mr. Dorr proceeds.
The COMMISSIONER: What is your motion?
Mr. ROCKWOOD: Does this stand, that the bench warrants are now offered?
The COMMISSIONER: Yes.
Mr. DORR: Let me offer them properly.
Mr. ROCKWOOD: I want to make a motion before anything further is done; it is not a motion to discharge; it is a proper motion for me to make at this time.
The COMMISSIONER: Let the bench warrants go in.

Mr. DORR: I offer in evidence four authenticated copies of
374 bench warrants issued for Moses Haas under indictments Nos. 26086, 26087, 26088 and 26089 outstanding in the Supreme Court of the District of Columbia, and I ask that they be marked Government Exhibit 5.

Mr. STEUER: Those bench warrants collectively are objected to on the ground that they are not identified with the proceeding that is now pending, and that it does not appear which of the warrants was issued in the proceeding in which testimony is now being taken, and they should not offer in evidence more than one bench warrant in one removal proceeding.

Mr. ROCKWOOD: I supplement that objection with this, that the bench warrants as offered are incompetent and immaterial, in that the bench warrants are not mentioned in the removal complaint, and the removal is not based upon the issuance of any bench warrants, but the removal is based solely upon the affidavit and complaint of Goldthwaite H. Dorr, which is based upon information and belief, and which complaint refers to the indictment, but does not refer to the issuance of any bench warrants, nor does it appear in this proceeding that any bench warrants were ever issued, which is
a jurisdictional defect, and deprives this court of any juris-
375 diction, or of any power to remove or to commit the defendants for removal, that proceedings cannot be initiated solely

upon the affidavit of the District Attorney, but his information must be supplemented by the statement of the fact that bench warrants were in fact issued, and that upon the bench warrants, that is, upon the demand of the Washington jurisdiction this court alone gets jurisdiction to remove. There is therefore nothing definite to show that the Washington jurisdiction demands the presence of the defendant Haas. If your Honor please, that is the vital objection to this proceeding, and if your Honor has any doubt about it I wish you would reserve your decision. The cases are clear and I will submit them to your Honor, that the sole jurisdiction vested in you must come from the bench warrants that he is wanted in the other jurisdiction, and cannot be based solely on information. As the case now stands before you there is absolutely no evidence, documentary or common law, or any evidence of any character, that Mr. Haas is wanted in the Washington jurisdiction, and the only jurisdiction which can be attached here must be based upon the issuance of the bench warrants from the District of Columbia. There is nothing here alleged in the papers. Now, the only thing your Honor can do under that ruling as I apprehend is to discharge the defendant.

376 The COMMISSIONER. Where is your authority?

Mr. ROCKWOOD. I will submit them to you.

Mr. DORR. The practice in this district is absolutely contrary to the suggestion of Judge Rockwood. The practice in this district is to interpret the law of Sec. 1014 in this way: That the statute gives power to any of the officers named in that statute to entertain the complaint that the crime has been committed in another district and, if a prima facie case is made out of the commission of the crime that the defendant can be committed to await the warrant of removal by the District Judge.

Mr. ROCKWOOD. I don't dispute that. Mr. Dorr can come in here and make an affidavit that a crime had been committed and upon the affidavit your Honor could commit for removal.

Mr. DORR. That is just what I have done.

Mr. ROCKWOOD. But he bases his affidavit entirely upon information and belief and bases it upon an indictment found in another district, so when you have an indictment it is our contention that you must supplement it by the issuance of a bench warrant. If Mr. Dorr swears positively that there was a crime committed in the District of Columbia, to-wit, grand larceny or extortion or

377 arson or any other crime made penal by the laws of the District of Columbia why the United States assumes jurisdiction, but when he comes in and says he has simply heard it on information and belief and attaches a copy of the indictment and bases information and belief on that, he has got to go further and show that the defendant Haas is wanted in the District of Columbia by the Washington authorities; otherwise jurisdiction does not attach here.

The COMMISSIONER. He charges that the said Moses Haas is now in the Southern District of New York.

Mr. ROCKWOOD. It appears from the bench warrants as now

offered that they were issued by the District Court of the District of Columbia on the 2nd of November, whereas your Honor issued your warrants in this proceeding on the 24th of June, so that concededly when your Honor issued your warrant for the apprehension of the defendant Haas you did not have before you the slightest information of any legal character that the defendant Haas was wanted in the District of Columbia; the sole information you had was that Mr. Dorr had heard of it. I attach so much importance to that point I would like to have your Honor reserve your ruling until I can submit authorities.

378 The COMMISSIONER: I will reserve ruling.

Mr. DORR: I do not propose to continue until your Honor has passed upon that point.

Mr. ROCKWOOD: I guess you will do as the Court says, if you come right down to it. I will submit authorities.

Mr. DORR: The library is at your service; if you have a case that contains such information I will send up for it.

Mr. ROCKWOOD: I cannot submit it on a moment's notice. I will have my books here.

Mr. DORR: We cannot go any further. If your Honor is going to decide adversely to us on that point we will sue out another warrant immediately.

Mr. ROCKWOOD: I could not come here prepared with a brief on this point. You did not have the papers here; they were not issued until the 2nd of November and he did not have them here until this morning. I cannot read Mr. Dorr's mind that he is going to introduce these in evidence.

Mr. DORR: The point if anything goes to the validity of the warrants, and that has been apparent to Judge Rockwood ever
379 since he got the papers last July, he had since last June to find any authorities, if he had any.

The COMMISSIONER: I was trying to save time. If you have any other points raise them now.

Mr. ROCKWOOD: The I will refer to my next point. I object to the continuance of the proceeding against Moses Haas unless the proceeding is also continued against Theodore H. Price, for the reason that the information of Mr. Dorr in both cases is made against Theodore H. Price—in all cases is made against Theodore H. Price and Moses Haas, and your Honor's warrant was issued against them both, and the proceeding for removal was initiated against them both by the District Attorney, both are in court, and the District Attorney has *now* power upon the charge of conspiracy of this character to elect that he will proceed against one and not proceed against the other, the two defendants being arrested on a warrant issued by your Honor upon a complaint against them both.

Mr. DORR: As to that the warrant as to Theodore H. Price has never been served and has been dismissed.

Mr. ROCKWOOD: I object to that statement unless proof of it is introduced.

Mr. DORR: It is merely the fact. The endorsement ap-
380 pears on the——

Mr. ROCKWOOD: There is no evidence of that.

Mr. DORR: The evidence—you have eyes Mr. Rockwood, if you will use them. It is on the warrant.

Mr. ROCKWOOD: The warrant reads: Whereas complaint on oath having been made charging that Theodore H. Price and Moses Haas conspired to defraud the United States and to commit certain offenses, &c., you are commanded to apprehend the said Theodore H. Price and Moses Haas and bring them before me, &c. Now, there is a joint charge against Haas and Price charging them jointly with conspiracy, and the District Attorney is without power to withdraw his proceeding against one and elect to continue against the other. I offer in evidence on that point a warrant as issued by your Honor.

The COMMISSIONER: Wouldn't the District Attorney have a right to withdraw the complaint against one defendant?

Mr. ROCKWOOD: Not where the charge is joint. These men are charged with joint conspiracy in the complaint and in your Honor's warrant with having united to commit a crime. If he withdraws against one he withdraws against both on account of the peculiar character and nature of the charge.

381 Mr. DORR: This is not a trial of these defendants for the offence. The whole issue before you is whether one or both or either of these defendants has committed a crime in the District of Columbia.

Mr. STEUER: To meet the situation that you hold out, Judge Hough ruled the other day in the Morse trial on a request to charge—there may be something in Mr. Dorr's point that this is not a trial, but upon the question of whether they withdraw against one and not against the other that the indictment would fall. I call your attention to the fact that the other day, Judge Hough, when Mr. Olcott presented a request to charge that the jury could find one guilty without the other, he ruled that they could not, and the fact would be that on indictments for conspiracy they would have to find on both; in other words, it is impossible to have a conspiracy without having two in it.

Mr. ROCKWOOD: What can be the possible point in removing Mr. Haas and not removing Price when they are jointly charged with the commission of a joint offence? Now having initiated this proceeding against them both jointly, and having charged them in a sworn complaint with having committed a joint offence and not a separate offence, he must proceed upon the line that it is a joint offence, or he must withdraw the entire proceeding.

382 Now let me read this to your Honor so that your Honor will see what the charge is: Whereas complaint on oath in writing having been made charging Price and Haas with having conspired to defraud the United States and to commit certain offenses, &c., and it having been satisfactorily proven to me that the said Price and Haas are in the City of New York, you are hereby commanded in the name of the President of the United States to apprehend the said Price and Haas and bring their bodies forthwith before me that they may be dealt with according to law for the said offence, which is conspiracy, a joint offence, and which cannot be separated. The District Attorney cannot say I will proceed

against Haas and not against Price, because the moment he says that he consents impliedly to the discharge of both defendants. The authorities hold conclusively that the dismissal of the indictment against one is dismissal against both. These are not separate offences, and the information is not alleged as separate crimes, but is alleged as to joint offences, and are both together and both are in court before your Honor and arrested by your Honor's warrant. Now, for them to ex parte, out of court, and without notice to Haas, to attempt to get a release of the proceedings so far as the de-
383 fendant Price goes and remove Haas without Price is a misuse of process which your Honor should not tolerate.

The COMMISSIONER: Are there any other points you want to raise?

Mr. ROCKWOOD: That is all for the moment.

Mr. DORR: I don't care to reply to that argument.

The COMMISSIONER: If you have decisions on the point. I don't want to decide offhand without seeing what the decisions are.

Mr. DORR: I feel confident that your views would not need any support by argument from me on a point of the simplicity and elementary character of that.

Mr. ROCKWOOD: I will ask your Honor to give me until Monday to submit my authorities on those last two points.

The COMMISSIONER: I will give you until Monday.

Mr. DORR: Then the Government will rest.

Mr. ROCKWOOD: You rest without a decision on those points?

Mr. DORR: Yes.

Mr. ROCKWOOD: Then I move for the discharge of the defendant Haas on the ground that no crime is made out, that he is
384 illegally apprehended and that your Honor is without jurisdiction to commit him, for all of the reasons alleged in the objections to your Honor.

The COMMISSIONER: Put in your brief.

Mr. ADKINS: Cannot we discuss that now; have the oral argument now?

The COMMISSIONER: Make your oral argument on the motion to discharge now and submit your brief Monday.

Mr. ROCKWOOD: You mean as to the merits of the whole proceedings?

Mr. ADKINS: Yes.

Mr. STEUER: What do you need an oral argument for? You can examine the memorandum and determine on the merits without an oral argument.

Mr. ADKINS: I think if an oral argument is to be had——

Mr. ROCKWOOD: I suggest to your Honor that I have made this morning two very vital objections to the jurisdiction, if your Honor will hear me on those questions Monday morning at 11:30, and then if your Honor overrules me I will introduce my evidence and then I will ask to be heard on the merits of the case.

385 Mr. ADKINS: This thing was postponed the other day very much against our objections, with the distinct understanding that the whole thing was to be disposed of to-day. Why can't he make his argument on the merits of the case?

The COMMISSIONER: I would rather hear you now orally on this case and then give until Tuesday for you to put in your briefs.

Mr. ROCKWOOD: I have said all I have to say on these two points without my authorities.

The COMMISSIONER: Proceed on the merits.

Mr. ROCKWOOD: I cannot proceed on the merits.

The COMMISSIONER: You can argue it now on the merits of the whole business and then I will give you a chance to put in your briefs.

Mr. ADKINS: It has been suggested by Judge Rockwood earlier in the proceeding that you might reserve certain points until the conclusion of the case; it seems to me that you might safely, if the motion to dismiss the proceeding is denied, Judge Rockwood will undoubtedly put in his evidence, whatever it is, and then renew that motion at the conclusion of his own evidence. It seems to me that this motion might be denied pro forma and he can put in his evidence now and we can have the oral argument on the whole
386 case and then*n*, at the proper time, put in briefs on both sides.

Mr. DORR: If your Honor will overrule the objections temporarily——

The COMMISSIONER: I will do that and you can argue later. I deny your motion pro forma now and I will hear you afterwards, and if I am satisfied your motion is good I will dismiss.

Mr. ADKINS: I move that we have the oral argument on the whole case this morning and we can put in our briefs later.

Mr. ROCKWOOD: I can't do that; I want to argue from the brief. Why should this case take the different procedure that Mr. Adkins suggests from any other case? The orderly course of procedure as I understand it is that after the case is closed your Honor then hears argument, and that is heard upon the briefs. That has been my experience in your Honor's court.

The COMMISSIONER: I want briefs in this case.

Mr. ROCKWOOD: Then I will ask your Honor to let me put in my evidence this morning, and the case being closed fix a time next week agreeable to you, any time, when you will hear argument.

387 Mr. ADKINS: We are prepared now.

The COMMISSIONER: The other side has got some rights here.

Mr. DORR: Have they a right to indefinitely delay this proceeding that they are making every effort to do?

The COMMISSIONER: See if you cannot arrange it amicably between you.

Mr. ADKINS: This case was postponed until to-day at the urgent request of Judge Rockwood because he desired Mr. Nicoll here to examine certain witnesses, now that has apparently fallen through.

Mr. ROCKWOOD: I cannot get him here, and the Court ruled I must proceed without him and I am proceeding.

The COMMISSIONER: Put in any testimony you have here now and then submit your briefs afterwards.

Mr. ROCKWOOD: And I want at the time I submit it to be heard before you very briefly.

Mr. ADKINS: Let us be heard to-day upon the oral argument and submit briefs afterward.

The COMMISSIONER: You can state the substance of your argument.

388 Mr. ROCKWOOD: No, I want to be heard on this matter; it is important to my clients.

The objection to the bench warrants being overrules, they are admitted in evidence and marked

Exhibit 5 of this date.

Exception by Mr. Rockwood.

The Government rests.

Mr. ROCKWOOD: I move for the discharge of the defendant Haas for the following reasons: First, that the indictments fail to charge him with the commission of an offence against the United States, either statutory or otherwise; second, that the Commissioner is without jurisdiction to commit for the reason that the warrant was issued upon the complaint of one G. H. Derr based entirely upon information and belief, which is attached to the copy of the indictment, but that said complaint fails to state that a bench warrant was issued by the Supreme Court of the District of Columbia, and it is apparent from the papers or the bench warrant as issued and now produced in court that said bench warrants were not issued until the 2nd of November, 1908, whereas these proceedings were instituted by the issuance of a warrant by the Commissioner on or about

389 the 24th of June, 1908, and that the papers as presented to the Commissioner without a bench warrant conferred no jurisdiction for the application of the defendant Haas. Third, that the Court is without jurisdiction to commit the defendant Haas for removal because there was not sufficient evidence before it at the time of the issuance of the warrant that the defendant Haas is wanted by the federal authorities in the District of Columbia. Fourthe, that the proceedings before the Commissioner are defective and have become void by reason of the attempted separation of the defendant Price and Haas, the warrant having been issued against them jointly, and the District Attorney ex parte having attempted to procure, as appears from an endorsement on the back of the warrant, a withdrawal of the proceedings against the defendant Price; that the proceedings are joint and cannot be thus separated; that they must be proceeded with together as originally instituted and that the withdrawal of the proceedings against the defendant Price operated pro tanto to effect a withdrawal of the proceedings against the defendant Haas; that the indictments are further defective in that they are void for duplicity, that they charge the violation of a rule of the Department of Agriculture, which cannot be made the basis

390 of an indictment and it is not a penal offence.

Mr. ADKINS: You mean each indictment is double?

Mr. ROCKWOOD: No. I don't mean each indictment is double; when I come to my argument I presume the Court will hear that, and furthermore that the attempted offences charged in the indict-

ments are not offences against any of the laws of the United States. Furthermore, that the statute of limitations has run against these alleged crimes, even if they had been committed as alleged. Another point, that the defendant Haas has been previously arrested and discharged by United States Commissioner Ridgway upon an alleged indictment setting forth substantially the same transactions or acts set forth in these indictments, and that he was subsequently arrested and discharged by United States Judge Holt upon an indictment based practically upon the same acts or transactions; that the indictment upon which the arrest was instituted before Commissioner Ridgway and United States Judge Holt alleged the conspiracy to have taken place at a time which would now make the present indictments void because the statute of limitations has run against the alleged criminal act; for all of which reasons we ask for the discharge of the defendant Haas.

391 Mr. GANS: And upon the further ground that neither by the indictment nor from any other source is there any proof before the Commissioner to indicate that there is probable cause to believe that the defendant is guilty of any crime cognizable by the United States Courts or cognizable by the courts of the District of Columbia.

Mr. ROCKWOOD: Furthermore, that this Commissioner is not vested by the papers with sufficient jurisdiction to commit the defendant, and for the reasons above stated and for the further reasons that the purported indictments are not officially and legally authenticated so that they can be used here as evidence of the commission of a crime, and the affidavit of Mr. Dorr being upon information and belief there is therefore no evidence of probable cause, the indictment when sufficiently authenticated being merely prima facie evidence of the commission of a crime and not conclusive.

The COMMISSIONER: That is true, but the indictment introduced in the case is prima facie evidence of the commission of the offence. The Supreme Court has held that.

Mr. ROCKWOOD: If it — authenticated properly.

The COMMISSIONER: I have held it is authenticated.

392 Mr. GANS: Provided that the indictment properly sets forth an offence.

The COMMISSIONER: Of course.

Mr. DORR: The 4th, 6th and 8th counts of the complaint, which is based on the 4th, 6th and 8th counts of the indictment known as No. 26088 are withdrawn.

Mr. ROCKWOOD: Mr. Dorr and Mr. Adkins say that clauses 4th, 6th and 8th of the indictment——

Mr. ADKINS: No, of the complaint here.

Mr. ROCKWOOD: Wait a minute. Of 26088 are withdrawn?

Mr. ADKINS: No, we don't. The counts of the complaint only are withdrawn; the complaint on removal.

Mr. ROCKWOOD: You do not withdraw the counts of the indictment?

Mr. ADKINS: We cannot withdraw them, because we are not proceeding on them.

Mr. ROCKWOOD: You withdraw the counts of the complaint?

Mr. ADKINS: Yes.

Mr. ROCKWOOD: I ask why you withdraw those counts?

Mr. ADKINS: That is our business.

Mr. ROCKWOOD: You decline to answer?

393 Mr. ADKINS: We withdraw them and that is sufficient for the record.

Mr. ROCKWOOD: The District Attorney having elected to withdraw certain counts of indictment No. 26088 do I understand that your Honor permits such withdrawal?

The COMMISSIONER: He withdraws 4, 6 and 8.

Mr. ROCKWOOD: And your Honor permits that?

The COMMISSIONER: Yes.

Mr. ROCKWOOD: Then I renew my motion for the dismissal of the defendant Haas, adding to my motion the further objection that the District Attorney is without power and your Honor without jurisdiction to permit such withdrawal at this time.

The COMMISSIONER: Of the complaint?

Mr. ROCKWOOD: Of the sections of the complaint; they must either withdraw it all or nothing; and I further call your Honor's attention to the fact that the indictment is so worded and the charges so intertwined and bear such relation to each other that the withdrawal of a portion of the indictment, to-wit, counts 4, 6 and 8, operates in effect to nullify the other allegations and clauses of the indictment, so that as to that particular indictment the with-

394 drawal of the said sections has nullified the entire instrument, and I ask specifically for a discharge upon that indictment, and that the warrant issued upon the complaint is based upon the entire complaint and not upon any particular section or count thereof. Furthermore, that the indictment in question, No. 26088, although setting forth alleged separate crimes in separate counts, that all of said counts are based upon one of said acts and transactions and that the nullification of one of said counts, to-wit, 4, 6 and 8 nullifies the entire instrument.

Mr. ADKINS: I understand that the Court has decided that he will overrule that pro forma and let you go ahead and put in your evidence.

The COMMISSIONER: Yes; if you have any evidence to put in.

Mr. ROCKWOOD: Now we offer in evidence a certified copy, or authenticated copy, of an indictment #24866, found in the Supreme Court of the District of Columbia at the April Term, A. D. 1905, against the defendant Moses Haas impleaded with Edwin S. Holmes, Jr., and Frederick A. Peckham, for an alleged violation of Sec. 5440 of the Revised Statutes of the United States.

395 Mr. DORR: I object on the ground that it is immaterial, incompetent and irrelevant. The fact that Mr. Haas has been indicted before does not seem to be material to show that he is no guilty of the offence as charged; it is probable cause to believe that he is guilty.

The COMMISSIONER: He has a right to make the offer.

Mr. DORR: I object to the admission of this in evidence as immaterial, incompetent and irrelevant.

Mr. ROCKWOOD: I state further that the object of offering this is to show that the statute of limitations has run against the present indictment for the reason that substantially the same offence was alleged in the 1905 indictment and the conspiracy there alleged to have occurred in the year 1904, so that if your Honor finds from an examination of the former indictment and an examination of the present one that the same offence is charged in the new indictment, why then the new indictment was outlawed, and your Honor should consider that as one of the points for the defense. Your Honor should have this indictment before you to properly pass upon it.

Mr. DORR: I should like to be heard on that.

396 Mr. ADKINS: Is that indictment any evidence of the guilt of the people charged in it with a crime?

Mr. ROCKWOOD: Not being upon the stand your Honor I decline to be interrogated. I will answer that by asking my friend if he contends it is prima facie evidence.

Mr. ADKINS: This is not prima facie evidence. It is not offered in this proceeding for the purpose of proving the man's guilt. You offer it for the purpose of fixing the date of the offence. Your Honor knows the date in the indictment is not binding upon the prosecution. It is simply a matter of pleading.

Mr. DORR: Certainly it is not res adjudicata that a particular crime was committed by Haas on a particular day except it is charged in this old indictment. There is nothing to show that this is the same conspiracy. It is entirely immaterial whether Mr. Haas was indicted perhaps a dozen times before. This indictment states the fact that Haas committed a crime in April 1904 and certainly cannot rebut the presumption of the other indictment that he committed a crime in May 1905.

Mr. ROCKWOOD: If your Honor please, if you say as a matter of fact——

Mr. DORR: That each indictment is prima facie evidence
397 that a crime was committed on this particular date, but one indictment cannot be used to rebut the presumption of the other. Each one stands——

Mr. ROCKWOOD: If they indicted me with committing a crime of arson as of November 10, 1904, upon certain facts therein stated in the indictment, allege overt acts in connection with that and then come on three or four years later and take some of those overt acts and set those up as the basis of another charge that I committed a crime, the court upon proceeding to apprehend me has a right to look at all the papers to see if in fact the crime was committed, and if you can find it was committed three or four years before the finding of the last indictment then the statute of limitations applies, so that this is important in proving to your Honor the date which the Government itself has fixed or entered into, to-wit April 1904: your Honor will apprehend that in 1904 *the* these parties are alleged to have conspired and the law says that in 1907 that ceased to be an indictable crime. Now they come on in other indictments with practically the same state of facts and get other

indictments. Now, Mr. Adkins asks are they bound by it? Of course they are, otherwise there is no formality in legal pro-
398 ceedings, and their present indictments, if I am correct in my contention, are outlawed.

Mr. ADKINS: I make this suggestion in reply to Judge Rockwood: As your Honor knows, these crop reports are issued six times a year. They are issued from June to November, and then in December, and then they skip again into June. Now this indictment which is offered by the defense alleges a conspiracy to have been committed by Haas and Peckham and Holmes and is laid as some time in 1904, the conspiracy being that Holmes conspired to defraud the Government, that Holmes did commit misconduct in office by giving to them in advance the reports which should be issued from time to time, and the last overt act is charged as of December 1904. Now in the present indictments, in the two of them in which Haas and Peckham are indicted, they are charged with conspiring to defraud the United States by inducing Holmes to give them the figures of the crop reports to be issued in June 1905, which is not mentioned in any of those other indictments, and they are also charged with conspiracy to bribe Holmes by inducing him to give them in advance the figures of the reports, and the charge is laid as of May 31, 1905, and the overt acts are charged as of that and subsequent dates. Now the facts that
399 he committed a crime in December 1904—it may be true that it concerned the report of 1904, but there is no evidence that he did not commit a crime and another crime concerning the crop reports of June 1905. Now in addition to that an indictment against Haas and Price charging that they conspired not only to induce Holmes to give out the crop report for June in advance, but to cause to be issued a false report, which is not hinted at in this indictment which he offers in evidence. Now our proposition is this: The fact that Haas committed a crime in December 1904 in regard to that report, and that he committed a crime for some months before that time in regard to other reports is not the slightest evidence that he is not guilty of the crime he is charged to have committed in June 1905 in connection with that report.

Mr. ROCKWOOD: My friend has entirely misapprehended his indictment. Indictment #26088 alleges that an overt act was committed at the District of Columbia on the 20th of November, 1904.

Mr. ADKINS: If you will permit me to correct that statement I will. You call my attention to something that I overlooked. Let me correct the statement that I made. The statement that I
400 made, since the Judge called it to my attention is true, all except two or three counts of this indictment #26088, which charge a continuing conspiracy from about the 15th of November 1904 to the 5th of July 1905, covering the December 1904 and the June and July reports of 1905. In that indictment the charge is made between Haas and Price, and in this indictment that is offered in evidence there is a suggestion that Mr. Price was a member of a conspiracy charged in those words.

Mr. ROCKWOOD: It appears in indictment #26088 that an overt act was committed on the 20th of November, 1904, at the District

of Columbia. If the first overt act was committed on the 20th of November, then it follows that the conspiracy must have been entered into before the overt act, therefore the conspiracy must have been entered into before the 20th of November, 1904. If we say that the conspiracy was entered into on the 20th of November, 1904, conceding them everything they claim, then it follows equally that the crime was outlawed on the 20th of November 1907. Now they come in and find their indictment on the 29th of May, 1908, or some months after it was outlawed, as appears right upon the face of the papers. Now the courts have held this: That conspiracy is first the conspiracy itself and not the overt act, but
401 the gist of the offence is conspiracy. When was it entered into? Why, when the minds of the parties met in unlawful contract; when they got together and made the unlawful contract. The Supreme Court has held conclusively that then the offence was committed, but it was not an indictable offence until the overt act was committed in pursuance of that. The first overt act charged in #26088 was November 19, 1904. Now, the only way that they can save themselves, if at all, is upon the theory that they have a continuing conspiracy, but upon that we will submit authorities to your Honor of the Supreme Court of the United States that as to the statute of limitations you must go back to the time when the parties met in unlawful agreement. To cover our point my friends have ingeniously worded the indictments in this way: That on and before the 15th of November, 1904 and continuously and at all times between the last mentioned date and the 5th day of July, 1905 they go on then—they did conspire, combine, confederate and agree &c. In other words, between the 15th of November and the 5th of July, 1905 there was a continuous every day meeting of the minds to conspire to defraud. They cannot allege it in any such way as that; they have got to set out a specific act, because the law
402 requires that a specific date must be mentioned so that the statute of limitations can be applied to it in some way. Now how can you apply the statute of limitations to an offence running between the 15th of November and the 5th of July? And the Supreme Court has held—we will submit the authorities to you—that the date of the original conspiracy, that when they entered into it and agreed to commit an offence that is the date from which the statute of limitations must be computed. Now they knew that Whoever drew that drew an ingenious indictment, and they sought to have it in that way by bringing it down to July 5, 1905, which saved it by a few days. We think on that fact your Honor should take all the papers and authorities and look at it carefully. These gentlemen are charged with a very serious crime, and if we are entitled to it we ought to be discharged.

Mr. DORR: The point is whether the new indictment charges a crime, and the point was raised and disposed of.

Mr. ROCKWOOD: The old indictments are offered here because they fix a date.

Mr. ADKINS: That is not the same conspiracy charged here.

Mr ROCKWOOD: The only question before your Honor is whether you will receive the indictment.

403 The COMMISSIONER: I will sustain the objection and give you an exception and hear from you further hereafter at the end of the case.

Mr. ROCKWOOD: How can I refer to it then? I cannot legally argue it before your Honor.

The COMMISSIONER: I don't want to introduce it in evidence because I don't think it ought to go in this case before me at all. It is res adjudicata so far as I am concerned.

Mr. ROCKWOOD: Then your Honor having sustained the objection it is not in the record and your Honor could not use it, even if you found we're right about it. As long as you have received their papers over our objection, is it not fair that you should receive this and hold your decision and allow us to use it.

Mr. DORR: The other exhibits were received simply that we might make progress in the case, but this case can be submitted with Judge Rockwood's brief.

The COMMISSIONER: If they don't object to it I will allow it.

Mr. ROCKWOOD: Then you receive it?

The COMMISSIONER: No; I don't receive it.

404 Mr. ADKINS: You can go ahead and use it in your argument; then if the Judge changes his mind it can go in afterward.

Mr. ROCKWOOD: It not being in evidence it is not in the record and you couldn't even refer to it.

The COMMISSIONER: I will sustain the objection and give you leave to renew it again.

Mr. ROCKWOOD: I will ask your Honor to mark it for identification.

Marked Exhibit A for identification.

Mr. STEUER: Mr. Commissioner in the rec-ption of evidence on a proceeding for removal; suppose you took evidence for a month that was incompetent and immaterial and could not affect your right to commit Haas for removal, there couldn't be any harm done; but if you reject evidence that ought to have been received, then there is a great deal of harm done, and the United States Supreme Court has so decided. Now it seems to me that the Government is not taking the proper attitude.

The COMMISSIONER: All that it is introduced by counsel for is to show the statute of limitations. Now that proceeding is entirely outside of this case before me.

405 Mr. STEUER: No, Mr. Commissioner, it is not. This indictment is outside of the proceeding before you.

The COMMISSIONER: It has been disposed of.

Mr. STEUER: Absolutely?

Mr. ROCKWOOD: No, it is still pending.

Mr. STEUER: It is not pending before you, but it is still pending.

Mr. ROCKWOOD: It is not pending before you, but it has not been discharged.

The COMMISSIONER: On hearing further argument the decision is reserved.

Mr. ROCKWOOD: Now I offer in evidence——

Mr. ADKINS: That indictment is pending in Washington; I think possibly your certificate shows that.

Mr. ROCKWOOD: No, it doesn't show that.

Mr. ADKINS: It is pending in Washington. It is admitted that indictments Nos. 24866, 24867 and 24907 are still pending undetermined in the District of Columbia.

Mr. ROCKWOOD: Now I offer in evidence a duly certified or authenticated copy of an indictment out of the District of Columbia at the April 1905 term, being indictment No. 24867, returned against Edwin S. Holmes, Jr., Frederick A. Peckham and Moses
406 Haas, for a violation of Section 5440 of the Revised Statutes of the United States, and is decision reserved on that?

Same objection by Mr. Adkins and decision reserved.

Mr. ROCKWOOD: I also offer that to be marked for identification.

Marked Exhibit B for identification of this date.

Mr. ROCKWOOD: Now I offer an indictment found in the Supreme Court of the District of Columbia, being indictment No. 24907, found at the April Term, 1905, and returned to the Court October 2, 1905, charging Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas with a violation of Section 5440 of the Revised Statutes of the United States as amended.

Same objection and ruling.

Marked Exhibit C for identification of this date.

Mr. ROCKWOOD: I now offer in evidence the original removal complaint, verified by Henry L. Burnett, United States Attorney for the Southern District of New York on the 5th day of January, 1906 before United States Commissioner Shields, against Moses Haas, which removal complaint is based upon an indictment found
407 in the District of Columbia at the April Term, 1905, being known as indictment No. 24907, and being the same indictment hereinbefore offered in evidence, together with the exhibits attached to said removal complaint, including the bench warrant issued the 3rd day of January, 1906 from the Supreme Court of the District of Columbia, upon said indictment and upon which the proceedings for removal were based, being the proceedings instituted by the Government before United States Judge Holt.

Same objection and ruling.

Marked Exhibit D for identification of this date.

Mr. DORR: Objected to on the ground that these removal proceedings relate to indictments not now before the Court and refer to other complaints on removal.

Mr. ROCKWOOD: They are offered for the purpose of showing the application of the statute of limitations and furthermore the discharge of the defendant Haas in that proceeding based upon the same facts.

Mr. ADKINS: What bearing has that upon this case?

Mr. ROCKWOOD: I will state my argument in due time.

The COMMISSIONER: I think they are entitled to know on what ground you offer it.

408 Mr. ROCKWOOD: I offer it to show the application of the statute of limitations, and furthermore that a discharge upon

these same facts by the Judge sitting as the Commissioner should be considered here by this commissioner upon the ruling made by Judge Holt at the time, that the decision of the commissioner in removal proceedings should be following in subsequent removal proceedings; Judge Holt holding in effect that the discharge of the defendant Haas by Commissioner Ridgway, while not res adjudicata, was at the same time of such force that it should be considered by the District Judge sitting as commissioner in the disposition of the removal proceedings before him, and upon that we cited several authorities to sustain that contention which we in turn want to cite here. And furthermore, that the proceedings before Mr. Justice Holt were all upon charges made in the present indictments, as showing that all of the new indictments are based upon the same facts and circumstances and as bearing upon our argument as to the question of the Statute of Limitations.

Mr. ADKINS: Are those the only grounds upon which you offer these things?

Mr. ROCKWOOD: No; I do not desire to be limited.

409 Mr. ADKINS: I am entitled to know in order that I might make an intelligent objection.

Mr. ROCKWOOD: That is all I think of now. If I think of any over Sunday I will take the benefit of them.

Mr. ADKINS: If you desire to suggest any more, I would very much like to hear them.

Mr GANS: We ought not to be limited to the purpose for which our offer is made.

The COMMISSIONER: You should state generally what the purpose of the offer is.

Mr. ADKINS: We think it is entirely inadmissible for this purpose, but there might be some other purpose for which you offer it and which you think is admissible.

Mr. HAAS: I understand that it is the ordinary practice that proof is offered and the relevancy and pertinency of the proof is to be determined by the court. Counsel will endeavor so far as possible to enlighten the court, and the attorney on the other side has heard of the objects for which it is introduced, but if the proof is competent for any purpose it ought to be received, and ought to be received even if counsel at the moment do not have in mind the particular purpose for which it may be competent and it ought not to be ruled out.

410 The COMMISSIONER: I suppose he has stated all he can think of at the present time.

Mr ADKINS: However, we will make our objection at the present time. I understand it is offered first for the purpose of showing the statute of limitations; as to that it is simply a second certified copy of #24907, one certified copy having already been offered in evidence; we object to it as being something already offered. It is not offered as I understand on the ground of former jeopardy. You do not claim this man has been in jeopardy under 24907, and I understand also that it is not offered on the ground of former adjudication.

Mr. ROCKWOOD: Yes.

Mr. ADKINS: And therefore Judge Holt held expressly it was not former adjudication.

Mr. ROCKWOOD: Let me read to you what he did say about that.

Mr. ADKINS: Then if it is offered simply for the purpose of showing the Judge's view upon the law it is not admissible as a matter of evidence, but is a matter which might properly be addressed to your Honor as an authority in the case.

111 Mr. ROCKWOOD: "The defendant's counsel"—Judge Holt says—"claims that the decision of Commissioner Ridgway should be held to be conclusive." That was me. "He admits that such a decision is not technically res adjudicata and the authorities so hold." I took the facts I had here and the authorities so held. "The decision of a committing magistrate refusing to hold a prisoner for trial or removal, like the Grand Jury's decision in refusing to find an indictment, is not res adjudicata, and another application can be made upon the same facts. But ordinarily" Judge Holt says—"in the absence of special circumstances the decision of any judicial officer having jurisdiction should be held to be conclusive on the same set of facts. In this application I sit as a committing magistrate with exactly similar jurisdiction as that of the commissioner. The evidence submitted is precisely the same in both cases, and it would be entirely proper in this case to discharge the prisoner upon the ground that he has already been discharged by the decision of another magistrate having concurrent jurisdiction. Moreover, I have read the very elaborate and able opinion of Mr. Commissioner Ridgway, and concur entirely in his conclusions and in the
112 grounds upon which he bases them. But as the question involved is a novel and important one and has been argued very elaborately by counsel on both sides, I will add a few suggestions, in addition to those contained in the opinion of Mr. Commissioner Ridgway, which seems to me to have weight." So that Judge Holt concurred as I contended, although it was not res adjudicata the decision of the court of concurrent jurisdiction upon the same set of facts should be controlling, and our contention here is that they are practically the same state of facts, that there are no new facts and that in arriving at a decision upon the question of the statute of limitations your Honor must consider all these facts and all that has gone before in order to mete out justice to the defendant Haas. And I think it is fair that your Honor should take these papers and have the whole case.

Mr. ADKINS: We renew the objection we have already made.

Decision reserved.

Mr. ROCKWOOD: We offer in evidence the decision of Hon. George C. Holt, United States Judge, signed by him. I now read from the decision of United States Judge Holt consisting of findings of fact and conclusions of law made by him, together with the
113 order discharging the defendant, filed in the District Court apparently on the 21st of June 1906.

Mr. ADKINS: May I make this suggestion. Would not that rise or fall with the proceedings in this case, and cannot you submit that on the same grounds and subject to the same objections?

Mr. ROCKWOOD: Yes. You make the same objections; I offer it for the same purpose. I offer it in evidence.

Mr. DORR: Of course, the Government has no objection to your Honor looking at the action of other commissioners and any opinions that may have been filed by Judge Hough, but our contention is that they are not properly admissible in evidence; they are matters just like Judge Hough's opinion; Judge Holt's opinion I suppose you can look at without our offering it in evidence and I assume you will.

The COMMISSIONER: You can refer to it in your argument. I have made the same ruling.

Marked Exhibit E for identification of this date.

Mr. ROCKWOOD: Now I offer in evidence the decision of United States Commissioner Ridgway in a proceeding entitled United States vs Moses Haas and Frederick A. Peckham, which proceeding
414 was instituted for the removal of the defendants under an indictment charging them with violation of Section 5440 and I offer in evidence the complaint, warrant and decision in that case.

Same objection and ruling.

Marked Exhibit F for identification of this date.

Mr. ROCKWOOD: And I would like to swear Mr. Adkins of your Honor please.

JESSE C. ADKINS sworn by the Commissioner:

Mr. ROCKWOOD: I reserve the right, if your Honor please, instead of swearing Mr. Adkins, I reserve the right to procure copies of his appointments as special assistant to the Attorney General which I will ask to have received as evidence.

Mr. DORR: I will object to any such——

Mr. ROCKWOOD: And I will ask him to simply state if he did appear before the Grand Jury in connection with this prosecution.

Mr. DORR: I object.

Objection sustained.

Mr. ROCKWOOD: I will ask him the question.

415 By Mr. ROCKWOOD:

Q. Mr. Adkins, you have been designated as a special assistant to the Attorney General in these cases?

A. Yes.

Q. Were you designated prior to the time when the indictments were found in Washington upon which this removal proceeding is based?

Mr. DORR: I object to that as immaterial, incompetent and irrelevant.

Objection sustained. Exception.

Q. Pursuant to that designation did you appear in the Grand Jury room at Washington in the District of Columbia, before the Grand Jury, when witnesses were sworn and the indictments were

returned by the Grand Jury in the Supreme Court for the District of Columbia?

Mr. DOBB: Objected to as immaterial, incompetent and irrelevant and an attempt to pry into the secrets of the Grand Jury room.

Objection sustained. Exception.

Q. I repeat the question to you, stating to you that I refer particularly to the four indictments upon which these removal proceedings are based and upon which we are now proceeding before Commissioner Shields?

116 Mr. DOBB: I object.
Objection sustained.

The COMMISSIONER: Objected to on the broad ground of the decisions of the Supreme Court that you have not right to go into that.

Mr. STELLE: I don't think that decision holds that you cannot show this.

The COMMISSIONER: Outside of that you have no right to put the District Attorney on to tell what took place before the Grand Jury.

Mr. STELLE: The proceeding you have in mind Commissioner is the one in which I examined Young, and wanted to get from him the evidence that he had in his possession, and the Court thought that I shouldn't get the evidence, that is all—they did not say I couldn't examine him.

Q. Now, Mr. Adkins, can you state how many appointments you had, how many in existence in the month of May, 1908?

Mr. DOBB: Objected to as immaterial, incompetent and irrelevant.

Objection sustained. Exception.

Q. Will you state the salary attached to your employment and whether or not the salaries in the aggregate exceeded
117 $2500?

Same objection, ruling and exception.

Q. At the time of your appointment as special assistant to the Attorney General, at the time when you were appointed special assistant to the Attorney General in these case, were you also acting as an assistant to the United States District Attorney in the District of Columbia?

Same objection, ruling and exception.

Mr. ROCKWOOD: That is all we have to offer now.

The COMMISSIONER: I will give you time to put in briefs.

Mr. ROCKWOOD: On account of Court engagements I want to ask your Honor to fix a date when we can present an oral argument and at the same time file briefs. I am to be in Philadelphia on a trial there by Wednesday, in the Circuit Court of Appeals here on Monday, so that if your Honor could see your way clear to put it a week from Monday that would be very agreeable to me.

Mr. DOBB: I object to that. This matter is one in which we have

been ready and have been urged by the Attorney General in the Department of Justice to expedite so that the defendant Haas
418 can be in Washington on December 1st, and we have granted adjournments one after another to Judge Rockwood.

Mr. GANS: I have been called into this case only about two weeks ago, and since that time I have been devoting practically all of my time to examining the questions that will arise before you, sir, in this proceeding, and I think you will find that they are exceedingly intricate. I am very desirous to do everything in my power to have those questions presented when we close that Judge Rockwood may have considered important and my view of the questions that he does consider important; I want to present those to Judge Rockwood and assist in the preparation of the brief, and it will take my time night and day for a week or 10 days from now to get a brief prepared and I cannot see that there is any such urgency as will prevent the defendant getting the benefit of such objections as we may enter.

Mr. DORR: Mr. Rockwood assured me if this delay was granted that he would go ahead from day to day until this thing was closed up.

The COMMISSIONER: I will give you until next Friday to put in your briefs at 11 o'clock. In the meanwhile I would like to have the briefs before that day submitted to Mr. Dorr.

419 Mr. DORR: I absolutely oppose any further dilatory tactics.

The COMMISSIONER: I will make it a week from to-day at half-past 10 o'clock for the submission of briefs and oral argument.

Hearing adjourned to Saturday, November 14th, 1908, at 10:30 A. M.

420 In the Matter of Extradition of MOSES HAAS et al.

NEW YORK, *November 14th*, 1908.

Met pursuant to adjournment.

Appearances.

The Commissioner and counsel as before.

Mr. ROCKWOOD: We offer in evidence indictment docket No. 307, United States of America vs. Edwin S. Holmes, Jr., Moses Haas and Frederick A. Peckham, being an indictment for conspiracy to defraud the United States under section 5440, filed in the United States Circuit Court on the 29th of May, 1908. And now as to your Honor's power to receive these indictments——

Mr. DORR: I object on the ground that they are immaterial, incompetent and irrelevant.

Mr. ROCKWOOD: You had some doubt at the last hearing as to whether you should receive these indictments; I find on the question of the statute of limitations and the other questions raised, that we have the right to have these indictments in, and I read from
421 a case on an application to remove presented to another federal district where they were charged with violating the Re-

vised Statutes, Sec. 5440 by conspiring to defraud the United States of public lands subject to entry under timber and stone Act of June 3, 1878, certified copies of General Land Office records showing that all the entries of public land mentioned in the indictment were perfected and issued therefor prior to all the alleged overt acts under the alleged conspiracy and more than three years before the indictment was filed, were admissible on the question of probable cause of the charge.

The COMMISSIONER: Is that the Benson case?

Mr. ROCKWOOD: No. It is a comparatively recent decision, but the idea is that you should have before you all of the indictments, because if you don't have you cannot pass upon the objections we raise.

Decision reserved.

Mr. ROCKWOOD: The decision I cited to your Honor is 150 Fed. Rep. 431. I think that question ought to be determined for this reason: That if your Honor should decide against us and issue an order to commit Mr. Haas to the Marshal for removal, and at the same time exclude this evidence, it would not be before the
122 Court on any application we might make for habeas corpus. Now, it can do no harm, and it is the basis of my entire argument, practically, or a large part of my argument on all of these different indictments that have been found. In this previous case I have just cited in 150 Fed. Rep. it was held that certified copies of a record were admissible on the question of probable cause, and that is what we offer them here for.

Mr. DORR: My objection as to the indictments other than the ones that are found in this district, that they all relate on their face, or appear to relate on their face to a conspiracy to defraud the government and obtaining advance information as to the cotton crop reports of December 1904, and that not one relates to the transactions alleged in the indictment in evidence here for the Government which dealt with the cotton crop report, or a conspiracy to obtain advance information as to the cotton crop report of June 1905, and to render said cotton crop report of June 1905 inaccurate, and therefore on the face of the indictment, the old indictment, the old Washington indictments which are offered in evidence, relating to entirely different crimes. The further objection that the mere fact that the indictments were found, even though they had been for
123 the same crime, would not show that the statute of limitations had run.

Mr. ROCKWOOD: That is just my point.

The COMMISSIONER: I will allow them in for what they are worth. The Government can have an exception.

Mr. ROCKWOOD: The old Washington indictments allege a conspiracy to have been entered into on the 2nd of June, 1904, the object of the conspiracy being to affect the crop report among other of June 1905, which is the same crop report mentioned in the subsequent indictments, so that all relate to the same crime.

The COMMISSIONER: That is the reason I allow them to be in now.

Mr. ROCKWOOD: Now I offer in evidence indictment Docket No. 308, filed in the Clerk's office of the United States Circuit Court May 29, 1908, entitled United States vs. Theodore H. Price, Edward S. Holmes, Jr. and Moses Haas for conspiracy to defraud the United States.

Mr. DORR: I object as immaterial, incompetent and irrelevant.

Same ruling and exception.

The COMMISSIONER: Were they all filed the same day?

424 Mr. ROCKWOOD: Yes. We now offer indictment, Docket No. 309, entitled United States of America against Theodore H. Price and Moses Haas, being an indictment for conspiracy to commit an offence against the United States, filed in the office of the Clerk of the United States Circuit Court on the 29th of May, 1908.

Same objection, ruling and exception.

Mr. ROCKWOOD: We now offer indictment Docket No. 310, entitled the United States of America vs. Moses Haas and ——— Peckham, filed in the Clerk's office of the United States Circuit Court on the 29th day of May, 1908, being an indictment for conspiracy to commit an offence against the United States under sections 5440 and 5451.

Same objection, ruling and exception.

Mr. ROCKWOOD: I understand now that your Honor not only admits the four indictments which I have just offered but also the other indictments and documents on which you previously reserved decision?

The COMMISSIONER: Yes.

Mr. ROCKWOOD: So that they are now all admitted?

The COMMISSIONER: Yes.

Mr. ROCKWOOD: I now rest, and with your Honor's per-

425 mission will proceed to the argument of the matter.

The COMMISSIONER: I am ready to hear you.

Mr. Rockwood then proceeded to argue his motions, after which an adjournment was taken until Monday, November 16th, 1908, at 11 A. M.

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UNITED STATES

vs.

MOSES HAAS & Others.

NEW YORK, *November 16th*, 1908.

Hearing re-named pursuant to adjournment.

Appearances.

The Commissioner and Counsel as before.

Mr. GANS: Mr. Commissioner, you will remember that in the course of the argument on Saturday we proceeded to the point of discussing the defects in the indictment, and at the close I think all of us, the District Attorney practically assenting as I understood the argument, that if the indictments were in any way, or any par-

ticular, defective, then, unless the defects were remedied by proof outside of the indictment removal could not be had.

Mr. DORR: I did not assent to that.

Mr. GANS: Perhaps I misunderstood your intellectual candor at the moment. And your Honor will remember that on Saturday in discussing the questions I proposed to raise I said that among other defects in the indictments were a number which I should state—

I don't mean to state that those are the only defects in the
427 indictment—I don't mean to foreclose myself in any way from raising other objections than those that were stated; and confining myself now to the stating of those things which it would seem to me principally those on which the court must decide that these indictments and each of them is bad.

The first point, as the Commissioner will remember is that the first count of the indictment #26088 was bad for the following reasons: Because it attempts to charge a conspiracy to defraud the United States, and in stating the object of the conspiracy sets forth matter which does not constitute a fraud on the United States, since the matter to be affected was not money, property or other substantial interests of the United States. That proposition as I said on Saturday I do not propose to argue in view of Judge Hough's decision on the point.

I come next to the next proposition, which is as follows: Because the alleged misconduct upon which the charge is based was a violation of the practice, custom and regulations of the department, and criminality cannot be based upon an agreement to violate a practice or custom of a department, since the practices and customs

of departments are not binding upon any one in the absence
428 of rules and regulations to enforce them, and regulations of departments are not matters of which the courts will take judicial notice, and if they are relied upon as the basis of a criminal charge must be pleaded. (Mr. Gans argued this at length.)

Coming now to the third proposition, and this is one I consider of absolutely the utmost seriousness. When you come to consider it yourself you will find it will go to the very meat of the indictment; it is a fact which has not been considered by Judge Hough, and so far as I know was not presented to him at all.

Your Honor will remember that the gravamen of the offence in a number of the counts of the several indictments is an agreement to disclose to unauthorized persons who received the information.

The agreement, as the Commissioner will remember, which is pleaded as a corrupt conspiracy is an agreement on the part of Price and Holmes and Haas that Holmes, who was in an official position, or quasi official position, and as a result thereof was able to get certain information, was to disclose that information in violation of the duty which they allege was imposed upon him not to disclose it, or to disclose it to persons who were not authorized. Now

429 then, the gravamen of that offence as pleaded then, would be not the disclosure of the information that he got, but the disclosure to persons who were unauthorized. In other words, there were any number of people to whom under the allegations of this

indictment Holmes when he got the information would have been entitled to disclose it. (Mr. Gans argued at length.)

Coming now to the second count of the indictment, that I say to you, sir, is bad, first for uncertainty, in that it attempts to charge a conspiracy as having been committed continuously over a period of five months. (Mr. Gans argued at length.)

The next proposition with respect to this Count 2 of the indictment is that it is bad for multiplicity. I do not propose to elaborate on that point because it has been discussed with some elaboration by my distinguished predecessor, Judge Rockwood, but I want to point out merely specifically that this point of the indictment alleges four distinct and separate conspiracies. (Mr. Gans argued this at length, referring to the meeting of minds and commission of overt acts.)

The further objection to this count, and I think it will apply to all of the counts of the indictments, is that *the* attempts to
430 charge a fraud upon the United States, and the subject matter is not such as constitutes fraud, so without referring further to that point I will ask you to consider it as being made with respect to each one of the counts in this indictment.

Now then, coming to the third count of the indictment, we find what seems to me the most extraordinary departure from every rule of criminal procedure that has ever come to my notice in the course of an indictment. I concede that there is nothing more fundamental in the criminal law and the law of criminal pleading than the principle that I suggested a few moments ago—that whatever else may be required of an indictment it must be so clear that the person who has to meet it can by reading it determine from its face precisely that which he is called upon to meet, and he must be able to determine that by reading the indictment. (Mr. Gans argued further, reading and commenting upon the third count and also comparing it to the second count in indictment #26089.) This point I make as to the third count, but you will find it to apply to every subsequent count in this indictment and also to the second count of indictment #26089.

I come now to a further defect in the allegations of this
431 count of the indictment, and a defect which will be found in several of the other counts, though not in all of the other counts, and that is that there is no allegation of a place in which the crime is charged to have been committed. No laying of a venue, and if there is anything that is recognizedly fundamental and recognizedly jurisdictional it is that the venue should be laid, and it should be made to appear unquestionably that the Grand Jury has found that the matter charged as a crime has been committed within the district over which they have jurisdiction. (Mr Gans argued further.)

The next point that I urge upon you with respect to this count is with respect to that part of it which charges that a conspiracy was dependent, or rather, had for its object not merely the premature publication of the report, but the alleged falsification of the report. (Mr. Gans argued further.)

The fourth count of the indictment has been withdrawn.

The fifth count of the indictment I charge to be bad because, first it attempts to incorporate matters set forth in the second count which are bad; second, because of the nature of the conspiracy which it attempts to set forth, which does not affect property
132 or other rights; third, because it does not contain allegations that Price and Haas were not members of the department.

The sixth count of the indictment has been withdrawn.

The seventh count of the indictment I charge to be bad because it attempts to incorporate the matter set forth in the second count. (Arguing further).

The eighth count of this indictment has been withdrawn.

Now then, coming to indictment #26089, an indictment containing two counts, each of which attempts to charge the commission of a conspiracy to violate section 5451 of the Revised Statutes, the bribery section.

It will be found on an examination that the violation of law which is set forth to be the object of the conspiracy, namely: the crime was first, promising, offering and giving to an officer of the United States, or to a person acting for an officer of the United States, in an official function, to-wit, the said Edward S. Holmes, Jr. a sum of money the amount of which is to the Grand Jurors unknown, to induce him to do certain acts in violation of his official duty.
133 Now, then, the gravamen of the offence is the giving of money to do acts in violation of lawful duty, and those acts are set forth. Now, unless the acts which are therein specified are acts in violation of lawful duty, manifestly the indictment fails to set forth a crime. The acts which are set forth as having been contemplated to be done in violation of the lawful duty was the divulging of this information prematurely to persons unauthorized to receive it. There is no allegation in the indictment that Price and Haas the persons named to whom it was to be divulged, were persons unauthorized; hence, the act which is set forth as unlawful and for which the money was to be given was not an unlawful act; the giving of the money was therefore not for a purpose described as unlawful in the indictment and therefore the count of the indictment is manifestly bad. That count of the indictment is also bad because in setting forth the object of the conspiracy in contemplation it set forth the crime of bribery. (Mr. Gans argued further).

This defect applies as well to the second count of the indictment.

In addition to these grounds the first count of the indictment is bad, as we charge, because the allegation that the
134 subject of the matter of the bribe was a sum of money the amount of which is to the Grand Jurors unknown is too indefinite for one thing, and secondly because it is repugnant to a further allegation of the indictment wherein it sets forth a further certain sum, which must have been known to the jurors or else they could not have found that it must have been given to Holmes as the bribe set forth in the indictment. Hence, the Grand Jury having information as to the amount of money that was given will not be permitted to allege that the amount of money was unknown.

and having so alleged, and it being manifest that they had the information from which they could have made the indictment specific, the indictment should be held to be bad. Furthermore we allege that the indictment is bad in adding a conspiracy. (Arguing at length).

The second count of this indictment is bad we charge not only because of all the defects which appear in the first count, but also because it attempts to incorporate the matter set forth in the first count in the same way it was attempted in indictment No. 26088. There is the same defect in the method of incorporation. The matter this attempted to be incorporated must be read into the second count of the indictment, is therefore leaving that matter
435 absolutely blind, and also since the second count charged as the object to be attained by bribery not merely a prematurely divulged report, but a report which should be inaccurate, is bad, because in setting forth the inaccuracy it fails to charge that there was to be anything wilful or conscious or intentional in the inaccuracy.

Then since all the points that apply to those three indictments, No. 26087 have been discussed under the other two I will confine myself to a statement of them so that they can go on the record.

We charge that indictment No. 26087 is bad: First, because it fails to allege that Price and Haas were not members of the department, and hence fails to set out any offence tending to show that the agreements characterized as conspiracy contemplated the doing of anything by Holmes which would be in dereliction of his duty, and since the conspiracy sought to be charged is a conspiracy to commit an offence of promising Holmes a sum of money to induce him to commit acts in violation of his lawful duty the charge must fall when it appears that there is nothing in the indictment to show that the acts which were contemplated by the agreement were to be in violation of any duty.

Second, because the offence sought to be charged
436 as the object of the conspiracy is bribery, and in order to allege bribery, it is essential to charge a corrupt intent as accompanying the bribe, or the offer of the bribe, and there is no such allegation.

Third, because in order to charge bribery it is essential that it should appear definitely that the matter offered is a thing of value, and an allegation that the offer was to be a sum of money, the amount of which is to the Grand Jurors unknown, is too indefinite to make it certain that it was contemplated that anything of value should be offered.

Fourth, because the allegations are repugnant in that while it is alleged that the conspiracy contemplated the giving of a sum of money to the Grand Jurors unknown, it appears by overt act No. 7 that it was known to the Grand Jury that the conspiracy contemplated the giving of a definite sum of money, to-wit, the sum of One thousand dollars.

Fifth, because an agreement between "A" and his agents to offer a bribe to "B", while it may suffice to charge "A" and the agent

with the crime of bribery, if bribery be committed or attempted, does not suffice for a charge of conspiracy.

437 Sixth, because it appears that if any crime were attempted to be *perpetrated*, it was the crime of bribery, that the acts set forth in the indictment constitute the pleaded crime, if any, and that hence the conspiracy has merged in the pleaded offence.

Mr. Steuer argued at length on the subject of the demurrers to the indictments as argued before Judge Hough.

Recess until 2 P. M.

After Recess.

Mr. ROCKWOOD: I offer in evidence now in connection with the four New York indictments all of the proceedings by which Mr. Haas was apprehended, brought before the Commissioner to give bail, including the warrant, the bail bond, the bail given by him, the complaint of the District Attorney upon which he was arrested, if there was one, the demurrer subsequently interposed to the indictment, the motions to quash, the decision of Judge Hough on the motion to quash, the decision of Judge Hough on the demurrers and the orders entered therein and each thereof, and in de-

438 tail all of the proceedings, whatever they may have been, in connection with the New York indictments.

Mr. DORR: Suppose you simply offer the record on the New York indictments, which have already been offered in evidence; the record in the United States Circuit Court?

Mr. ROCKWOOD: In other words, I offer the record of the United States Circuit Court in relation to all of the New York indictments concerning the defendant Haas.

Mr. DORR: I object to that.

Objection overruled.

Mr. ROCKWOOD: Your objection is not based upon the fact that I do not now produce the original documents in court?

Mr. DORR: No.

Mr. ROCKWOOD: I understand you that you waive their physical production in the court room for the purpose of facilitating the offer made?

Mr. DORR: Yes. My objection is based solely on their incompetency.

Mr. ROCKWOOD: Now it is admitted, is it Mr. Dorr, that Mr. Haas is now at large on bail under the New York Indictments with

439 Martin Engel as surety in the sum, I think of $20,000?

Mr. DORR: I don't know the amount and I suggest the record will speak for itself.

Mr. ROCKWOOD: Is it admitted he is at large on bail?

Mr. DORR: I don't make any such admission on the record. The record speaks for itself. I suggest that as a matter of fact it would be well to have the stenographer note that you move to reopen your case.

Mr. ROCKWOOD: I offer in evidence so that they can be marked

bench warrant issued against Moses Haas on the 29th of May 1908, entitled United States of America against Moses Haas, and now produced by the United States Marshal.

Received and marked Exhibit 1 of this date.

Mr. ROCKWOOD: Now supplementing the argument made Saturday with reference to the fact that the indictments are found in two districts for identical offences, I wish to call your Honor's attention very briefly to some new authorities which I have found since my last argument and which are very material and vital at this time.

In United States vs. Fowkes, 53 Fed. Rep. an indictment was there found for the signing of a line voucher by a freight claim agent, and the court held that the offence punishable under section
440 10 of the Interstate Commerce Act is not begun in one judicial circuit and completed in another within the meaning of the Revised Statutes, Sec. 731, and is therefore *is* not cognizable in a District Court in the 8th Circuit. As bearing directly upon whether that evidence is proper to be brought up in this proceeding they held there that the Revised Statutes, Sec. 1014 under which removal is sought providing for the arrest of offenders and their removal to such federal courts as have cognizance of the offences, a person arrested in Pennsylvania merely on the strength of an indictment found in a federal district court in Missouri for violation of an Inter-state Commerce Act, can on application for habeas corpus and for a warrant of removal to such court introduce evidence to prove that the acts alleged as an offence *was* completed in Pennsylvania and therefore not solely within the jurisdiction of the federal court in Missouri.

441 Now that is important here as bearing upon the propriety of our introducing evidence here to show you that the offence under which Haas is now held was completed in the District of Columbia, as alleged in that indictment that is offered, so that it is proper for us to bring that up and proper for us to consider it, and it has never been considered in any other place.

I am passing some of these other cases except the case of Rosdeitscher, which is almost identical with the case at bar; 33 Fed. Rep. opinion of Judge Hughes, and Judge Hughes discharged the defendant because it was there held that the crime for which he was held was charged against him in another district. Now, then, the Constitution comes in on this by providing that an indictment cannot be found in one state of the Union for an offence committed in another, and I will read you the Judge's opinion. He says:

"My reasons for discharging the prisoner are founded on elementary principles. An indictment cannot be found in one state of this Union for an offence committed in another. This is forbidden by Clause 3 of Section 2 of Article 3 of the National constitution. This cannot be done either in a State Court or in a United States Court. The national constitution gives no authority to the United States to take original cognizance in one state of crimes committed in another state. In short it is fundamentally true that the jurisdiction of a federal court in one state is as distinct from that of a like court in another state as the jurisdiction of the Supreme Court of Pennsyl-

vania is distinct from that of the Supreme Court of Virginia. Sec. 1014 of the Rev. Stat. of the U. S. was enacted in order to
142 effectuate so far as it should lie in the province of the United States Courts to do so, this provision of the constitution. The terms of this section, though general, must be construed with reference to the constitutional provision which it was designed to carry into effect. The judges and other officers of the United States act, essentially in a character ancillary to the authorities of the jurisdiction in which the crime was committed. Whatever is done—all that is done here—must be essentially ancillary in character. We must know from the authorities of the locality of the crime, in the form of demand, that a prosecution is on foot in that jurisdiction. The proper course for the complainant in this case to have taken was to have gone to Pennsylvania and made or have sent his complaint there, and caused a demand to be made from there for his arrest here."

Now I didn't have the other day when I argued before your Honor over a dozen cases all to this effect. That when a crime is commenced in one district and completed in the other, the defendant may be indicted in either, and that is the express holding of Sec. 731 of the Rev. Stat. But when the offence is completed in that district—I want to bring that point home as strongly as I can—when the offence is complete in that district then the venue lies only in the district wherein it was complete.

Now, in Benson v. Henkel, 198 U. S. 1; that was a case which was begun by the mailing of a letter in one district and completed by the receipt of the letter in the other, and the U. S. Supreme Court has held that the district where the letter was received was the proper place where the indictment would lie. Now, then,
143 in this case there is no charge in this indictment that they conspired here and completed it there, but it is alleged in each indictment that the offence was complete in each district and I call your attention to this further fact, which I did not call your attention to the other day, that the overt acts alleged in each of these series of indictments, that is the four indictments in Washington and the four indictments in New York, are identical with the exception of the five counts to which I subsequently called your attention.

One further point and I am through. Mr. Haas stands before you today, out upon bail and in the custody of his bondsman. He stands here with proceedings pending in this district against him, initiated by the United States upon indictments found in the Southern District of New York for identically the offences charged against him in the District of Columbia for identically the same charge. The question that you have to consider among others is where was the crime committed, and is he any more triable in Washington than here. The Government has initiated this proceeding before your Honor and they have selected this forum where they will try this crime, if it is a crime, and have set forth that the offence was completed in this district and I want Mr. Dorr to point out
144 any decisions or provisions of the statutes or any precedent which permits the Government to find indictments in an-

other district and to remove him to another district at great expense. As we urged you the other day, this case is of extreme importance and you have got to find as one of the elements upon which removal can be granted that the offence is trygable and trygable only in the District of Columbia. Can you say upon these papers that this offence is trygable only in the District of Columbia, or can you not say, and is it not your duty to say, if you find the facts as we allege them, that he is on bail here, the government has selected this jurisdiction, has indicted him here and alleges the offence not to have been begun here but to have been completed here, and every one of the overt acts set forth in the Washington jurisdiction are committed in this jurisdiction. I think this objection is vital to the proceeding; I think it is vital to the proceedings instituted here, and I want my friend on the other side to cover that point and explain it to your Honor if he possibly can.

Mr. Dorr here argued at length.

Decision reserved.

445 Government Exhibits 1, 2, 3 and 4 were the Certified copies of indictments numbers 26085, 26087, 26088, 26089 attached to the complaints on removal, copies of which appear in the record herein at pages 247, 256, 285 and 338.

446 Ex. 5 11 7 08.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. No. 26086.

THE UNITED STATES
vs.
MOSES HAAS.

Indicted for Conspiracy to Defraud the United States.

The President of the United States to the United States Marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant Moses Haas, if to be found in your District, and him have before the Criminal Court for the said District of Columbia immediately to answer the United States touching the offense charged against him.

Hereof fail not and have there then this writ, so indorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court the 2nd day of November, A. D. 1908.

JOHN R. YOUNG, *Clerk*,
By WM. F. SEMOS,
Assistant Clerk.

447 Endorsed: Criminal Court No. 1. Criminal No. 26086. United States vs. Moses Haas. Bench warrant. Issued November 2d, 1908. Marshal's Return. Moses Haas not to be found Nov. 5, 1908. Aulick Palmer, U. S. Marshal.

448 In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. No. 26087.

THE UNITED STATES
vs.
MOSES HAAS.

Indicted for Conspiracy to Commit an Offense Against the U. S.

The President of the United States to the United States Marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant Moses Haas, if to be found in your District, and him have before the Criminal Court for the said District of Columbia immediately to answer the United States touching the offense charged against him.

Hereof fail not and have there then this writ, so indorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court the 2nd day of November, A. D. 1908.

JOHN R. YOUNG, *Clerk.*
By WM. F. SEMOS,
Assistant Clerk.

449 Endorsed: Criminal Court No. 1. Criminal No. 26,087. United States vs. Moses Haas. Bench Warrant. Issued November 2d, 1908. Marshal's Return. Moses Haas not to be found Nov. 5, 1908. Aulick Palmer, U. S. Marshal.

450 In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. No. 26088.

THE UNITED STATES
vs.
MOSES HAAS.

Indicted for Conspiracy to Defraud the U. S. and to Commit an Offense Against the U. S.

The President of the United States to the United States Marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant Moses Haas, if to be found in your District, and him have before the Criminal Court for the said District of Columbia immediately to answer the United States touching the offense charged against him.

Hereof fail not and have there then this writ, so indorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court the 2nd day of November, A. D. 1908.

JOHN R. YOUNG, *Clerk.*
By WM. F. SEMOS,
Assistant Clerk.

451 Endorsed: Criminal Court No. 1. Criminal No. 26,088. United States vs. Moses Haas. Bench Warrant. Issued November 2d, 1908. Marshal's Return. Moses Haas not to be found Nov. 5, 1908. Aulick Palmer, U. S. Marshal.

452 In the Supreme Court of the District of Columbia, Holding a Criminal Term.

Criminal. No. 26089.

THE UNITED STATES
vs.
MOSES HAAS.

Indicted for Conspiracy to Commit an Offense Against the U. S.

The President of the United States to the United States Marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant Moses Haas, if to be found in your District, and him have before the Criminal Court for the said District of Columbia immediately to answer the United States touching the offense charged against him.

Hereof fail not and have there then this writ, so indorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, Chief Justice of said Court the 2nd day of November, A. D. 1908.

JOHN R. YOUNG, *Clerk.*
By WM. F. SEMOS,
Assistant Clerk.

453 Endorsed: Criminal Court No. 1. Criminal No. 26,089. United States vs. Moses Haas. Bench Warrant. Issued November 2d, 1908. Marshal's Return. Moses Haas not to be found Nov. 5, 1908. Aulick Palmer, U. S. Marshal.

454 *Authentication of Record.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the bench warrants annexed to this certificate are true copies of originals on file and of record in said court in said causes.

Witness my hand and the seal of said court, this 6th day of November, 1908.

JOHN R. YOUNG, *Clerk.*
[SEAL.] By ——— ———, *Asst. Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said court, to be in due form.

Witnes my hand and seal this 6th day of November, 1908.

HARRY M. CLABAUGH, [SEAL.]
Chief Justice.

I, John R. Young of said court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 6th day of November, 1908.

JOHN R. YOUNG, *Clerk.*
[SEAL.] By ——— ———, *Asst. Clerk.*

455 In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

456 Filed in Open Court, August 22, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1905.

DISTRICT OF COLUMBIA, *ss:*

The grand jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath do present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the second day of June, in the year of our Lord one thousand nine hundred and four, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known

as associate statistician and another of whom was designated and known as assistant statistician, and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

457 And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, and said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; and that during the time and times aforesaid after the said statistician or the said associate statistician had in the manner aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of the law aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, as a matter of course in the ordinary routine of his office, and relying upon the proper performance of their duties in the preparation of said report by the said statistician and the said associate statistician, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said statistician or by the said associate statistician acting in his place and stead.

458 And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said reports were intended to be as nearly fair, impartial, correct and accurate as it was possible for such reports to be; and the said reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau were charged with the duty of honestly and in good faith assisting in the preparation of the said reports and of carefully guarding and keeping secret and of not divulging to

any person outside of said bureau any information acquired by him or them in such preparation of said reports, until said reports had been prepared, officially approved, issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so required by law to be prepared, approved, issued and published by the Department of Agriculture as aforesaid, was a report upon the condition of the cotton crop, which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October
459 and December in each year.

That on the sixteenth day of November, in the year of our Lord one thousand nine hundred and three, and thence continuously until the ninth day of June, in the year of our Lord one thousand nine hundred and five, one, Edwin S. Holmes, Junior, late of the District aforesaid, held and occupied the said office of associate statistician, and as such associate statistician was charged with the duties hereinbefore set forth; all and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, Junior, and to a certain Frederick A. Peckham and to a certain Moses Haas, both late of the District aforesaid, at the time of the commission by them of the offense hereinafter set forth.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the second day of June, in the year of our Lord one thousand nine hundred and four, and at the District aforesaid, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas unlawfully and fraudulently did conspire, combine, confederate and agree together to defraud the said United States, in the dishonest manner and through and by means of the dishonest scheme and agreement following, that is to say:

That they, the said Frederick A. Peckham and the said Moses Haas should and would procure some other person or persons possessed of money who was and were not employed in or connected with said Bureau and who should and would, with the guidance and assistance of information to be furnished by the said Edwin S. Holmes, Junior, in contravention of his said duties as said
460 associate statistician, and in violation of the confidence reposed in him by the said Secretary of Agriculture, engage in buying and selling cotton as hereinafter set forth; and that he, the said Edwin S. Holmes, Junior, should and would in so far as in him the power lay, some time in advance of the official issuance and publication of each of said cotton crop reports, and in contravention of his duties in the premises as such associate statistician, furnish to the said Frederick A. Peckham and to the said Moses Haas, or directly to such person or persons so to be procured by the said Frederick A. Peckham and the said Moses Haas, before the official issuance and publication of each of said cotton crop reports as hereinbefore

set forth, and in advance of the time or times when the same could legally be made public, the facts and figures and other information which were to be contained in said report, and that the said Frederick A. Peckham and the said Moses Haas, whenever such information was so furnished to them or either of them should and would before the official issuance and publication of said report, communicate the said information to said person or persons so to be procured by them, the said Frederick A. Peckham and the said Moses Haas; and that thereupon the said person or persons so to be procured by the said Frederick A. Peckham and the said Moses Haas should and would, and before the official issuance and publication of said report, and with the aid and guidance of said information so furnished by the said Edwin E. Holmes, Junior, buy or sell cotton in large quantities, as the case might be, according as the market price of cotton might be affected in the one way or the other by the information contained in said report when the same should be officially approved by the Secretary of Agriculture and issued and
461 published; and that after said report last mentioned had been so officially approved and issued and published, the said person or persons last mentioned should and would sell or buy, as the case might be, large quantities of cotton corresponding in amount to the quantities so bought or sold before the official issuance and publication of said report, and would thereby make large gains and profits; and that such large gains and profits so made would thereafter be divided among such person or persons last aforesaid and the said Edwin S. Holmes, Junior and the said Frederick A. Peckham and the said Moses Haas in proportions to be agreed upon by them.

And the Grand Jurors aforesaid, upon their oath aforesaid do further present:

That in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Frederick A. Peckham at the District aforesaid on the sixth day of August in the year of our Lord one thousand nine hundred and four did write and send by telegraph to one Lewis C. Van Riper at the City of New York in the State of New York a telegram of the tenor following, that is to say:

"16- WASHINGTON D C. *Aug.* 6-04.

L. C. Vanriper, Room 1001, No. 20 Broad St., NY.

Come to Washington at once wire me Raleigh hotel time of arrival dont advise Mrs P

FRED. 1:19 pm."

And that in further pursuance of the said unlawful con-
462 spiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the seventh day of August, in the year of our Lord one thousand nine hundred and four, did meet the said Lewis C. Van Riper, who was not during the time and times aforesaid employed or connected with said Bureau, and did then and there cause the said Lewis C. Van Riper to meet the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, and on the eighteenth day of August, in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"Aug. 18, '04.

Dear Mr. Van Riper: Other parties have changed plans slightly and I think it advisable for you to know it.

Can't you come here Saturday night or Sunday? If not, I might be able to go to N. Y. Saturday afternoon. Write me on receipt of this and, if you decide to come here, tell me when to meet you and where.

Yours, H."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S.
163 Holmes, Junior, on the twenty-first day of August, in the year of our Lord one thousand nine hundred and four did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"Aug. 21, '04.

Dear Mr. Van Riper: Yours received. That matter can wait a few days. Better have P. come as I can't get away before Saturday afternoon.

Just getting over a bad chill. Hope to be O. K. to-morrow.

Yours, H.

You got my initials wrong on last letter."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the state of New York a letter of the tenor following, that is to say:

"Aug. 30, '04.

If you have bought any of that stuff sell it out at once, and *sell* as much as you can in addition. We are going to show very slight decline, and, as this is totally unexpected, it will send things down like fury.

Other parties will close out tomorrow, and sell on Thurs-
164 day. Where is P.

Tear this up. H.

It may go up a little before Friday but probably not."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the state of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., *Aug.* 31, 1904

L. C. Van Riper, Esq., 108 Fulton St., N. Y. City.

DEAR VAN: About 85. It will surprise everybody and cause big drop—is opinion of best experts. There will be things doing *sure*. A drop of only (about) six points. This is one of the highest averaged for this (Sept.) month ever known. Is way above the 10 year average. Tear this up. Do all you can.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to
465 the said Lewis C. Van Riper at the city of New York in the State of New York another letter of the tenor following, that is to say:

"WASHINGTON, D. C., S 31, 1904.

10.30 P. M.

Letter No. 2.

Party for Price here tonight to make sure of figures. Tomorrow (Thursday) they are going to sell all they can without breaking market if they can. It may break tomorrow Saturday soon as report is out (perhaps before) they cut loose—selling everything in sight. Get in tomorrow early. *Be sure to close out Friday* as soon as effect of report has been shown.

No market Saturday (Holiday) & none Monday so I understand. This is best chance we will have.

Destroy."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham and the said Edwin S. Holmes, Junior, by means of the letters hereinbefore set forth, and before the official issuance and publication of the cotton crop report in the month of September, in the year of our Lord one thousand nine hundred and four, so far as in the said Edwin S. Holmes, Junior, the power lay, did furnish to the said Lewis C. Van Riper the facts, figures and information to be contained in said cotton crop report so to be issued and published on or about the third day of September in said last mentioned year.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the said Lewis C. Van Riper, with the guidance and assistance of the facts, figures and information so as last aforesaid furnished to him by the said Edwin S. Holmes, Junior, and by the said Frederick A. Peckham, did on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, and on divers other days between the said last mentioned day and the second day of September in the same year, and before the official issuance and publication of the cotton crop report on said last mentioned day, sell large quantities of cotton at the prices then prevailing in the open market; and that on said last mentioned day the said cotton report was officially issued and published, and that after the said official issuance and publication of said last mentioned cotton crop report there was a decline in the market price of cotton; and that thereupon, and after such official issuance and publication of said last mentioned report and after said decline in the market price of cotton the said Lewis C. Van Riper bought large quantities of cotton corresponding in quantity with the amounts so theretofore sold by him and at prices lower than those at which he had so sold said cotton, and did thereby make large gains and profits, to wit, gains and profits to the amount of twenty-six hundred and eighty dollars.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of one hundred and fifty dollars in the national currency and money of the said United States, and three checks drawn by the said Lewis C. Van Riper to the order of said Frederick A. Peckham, one of said checks being for the sum of two hundred and twenty dollars and another of said checks being for the sum of three hundred dollars, and the third of said checks being for the sum of six hundred and seventy dollars, a more particular description of which said checks for the sums of two hundred and twenty dollars and three hundred dollars the Grand Jurors aforesaid are unable to give, and the said check for the sum of six hundred and seventy dollars being of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Sept. 3rd*, 1904.

The Second National Bank of Hoboken,
Through the New York Clearing House Association.

Pay to F. A. Peckham or order Six hundred seventy & No 100 Dollars.

$670.00 100.

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did give to the said Lewis C. Van Riper a receipt of the tenor following, that is to say:

"SEPT. 3/04.

Rec'd from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, $220.00, respectively, paying all acc'ts in full to date.

F. A. PECKHAM."

468 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did endorse the said checks for the sum of six hundred and seventy dollars on the back thereof, the said endorsement being of the tenor following, that is to say,

"F. A. Peckham,"

and did deliver the said last mentioned check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the fifteenth day of September, in the year of our Lord one thousand nine hundred and four, did endorse the check last mentioned on the back thereof, the said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and on the day and at the place last aforesaid did present the said check last mentioned to the Central National Bank of Washington City, and did receive in exchange therefor the sum of six hundred and seventy dollars in the national currency and money of the said United States.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to

469 said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., 9/8, 1904.

Destroy.

V.

There will be a depreciation of 20 points in Spring Wheat on 10th—or from 87.5 (last report) to 67.5. Reduction may be more.

not less. Such a great reduction will no doubt raise price 5 to 10¢ inside of 2 or 3 days.

This is best chance will have on wheat. Get in heavy.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"Long conference Sunday between Colonel and man. S. has one something P. does not like. Is going, without S. knowing it, if possible, to put price up high as possible before 1st. Then if figures show 79 say, or better, instead 81.4 as before, something will drop. Belief here is you can get it going and coming. P. going to break S. later, if he can.

Destroy Save."

470 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASH'N, D. C., *Sep.* 28, ——.

L. C. Van Riper, 108 Fulton St. N. Y'k:

Nothing new since telephoning. Will not phone at nine morning unless something developes.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"TUESDAY, WASHINGTON, D. C., *Sept.* 28, 1904.

DEAR VAN: As stated over phone party went to B.—phoned N. Y. and evidently did not say anything *definite* as to movements—but inference was that he was going to get in and buy. When I said over phone—party thinks—only advised what Colonel in-

471 ferred—Not intended as my 'thinking.' Regret cannot get at it more definitely—and that program we were told about has not been, so far, carried out. From talks Col. has had with man he

believes they will start to buy tomorrow if they did not today. Note prices have advanced a little. Remember that Mr. P. (in N. Y.) would not say over phone to Balt. things he would if talking face to face, hence my aim on phone, and in this, to give you as good an idea as we have as to plans.

No use phoning in A. M. So wired tonight after talking with Col.—since talking to you on phone.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Sept.* 29, 1904—1.30 P. M.

L. C. Van Riper, 108 Fulton Street, New York:

Will write fully late tonight special delivery.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further

472 *And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further* effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the state of New York a letter of the tenor following, that is to say:

"9 P. M. Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.:

At 12 tonight party goes to N. Y. Before 8 a. m. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points that is from 84.4. Also that Texas report from present data shows a drop from 76 to 49. Something remarkable. Col. padded matters, making very strong, information which P. will get tomorrow—so he will be *sure* to jump right in & buy. Also part will be put in for usual ten thousand. Deterioration promises to be big—very. Reports not all in, but important ones rec'd all show above.

Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early & heavy & get all back & more."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick

A. Peckham on the twenty-sixth day of September, in the
473 year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper two checks of the tenor following, that is to say:

"No. A 1625 HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association,

(Not Over One Hundred Dollars.)

Pay to the order of F. A. Peckham One hundred & 00/100 Dollars.
$100 00/100. LEWIS C. VAN RIPER."

"No. A 1626 HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association,

(Not Over One Hundred $1008.)

Pay to the order of F. A. Peckham One hundred & 00/100 Dollars.
$100 00 LEWIS C. VAN RIPER.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid, on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1626 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Holmes.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further
474 effect the object thereof, and at the District aforesaid, the said Holmes, on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and did present the same to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in national currency and money of the said United States.

And that in further pursuance, of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1625 on the back thereof, said endorsement being of the tenor following, that is to say

"F. A. Peckham," and did deliver the said check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, at the District aforesaid, on the first day of October, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "Signature of check O. K. E. S. Holmes, Jr.," and did present the said last mentioned check to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred
475 dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid, did on the third day of October, in the year of our Lord one thousand nine hundred and four write and send by telegraph to the said Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Oct.* 3, 1904.

L. C. Vanriper, 108 Fulton Street, New York:

Successful bidder best contract ever had.

FRED."

And that in further pursuance *to* the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Moses Haas on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and four did come to the District aforesaid and did there remain until the thirtieth day of the same month, for the purpose of receiving from the said Edwin S. Holmes, Junior, facts, figures and information which were to be contained in the cotton crop report which was to be issued and published by the Department of Agriculture on or about the third day of December in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said
476 Moses Haas, on the twenty-fifth day of November, at the District aforesaid, did give to the said Lewis C. Van Riper the sum of ten thousand dollars to be used by the latter in the purchase or sale of cotton before the publication of said report on or about said third day of December, in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, on the twentieth day of November, in the year of our Lord one thousand nine hundred and

four, and on divers other days between the said day last mentioned and the third day of December in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas did furnish to the said Lewis C. Van Riper facts, figures, and the information which were to be contained in the said cotton crop report which was to be issued and published on said last mentioned day.

And the Grand Jurors, on their oath aforesaid, do further present:

That the said Lewis C. Van Riper with the aid and guidance of said facts, figures and information so furnished to him by said Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas as aforesaid, did on said twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the third day of December, in the year of our Lord one thousand nine hundred and four, sell large quantities of cotton to be delivered in the month of March
477 next following; that upon the said third day of December, in the year of our Lord one thousand nine hundred and four the cotton crop report for that month was officially approved by the Secretary of Agriculture and was issued and published; that after the issuance and publication of said report the market price of cotton to be delivered in the month of March next following greatly decreased, and the said Lewis C. Van Riper thereupon and at such decreased prices bought large quantities of cotton corresponding in amount to such quantities so theretofore sold by him, and that the said Lewis C. Van Riper did thereby make large gains and profits amounting in the aggregate to a large sum, to wit, to the sum of two hundred and ten thousand two hundred and seventy-one dollars and sixty-two cents.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Moses Haas on the twelfth day of December, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States, and did on the day and at the place last aforesaid receive from the said Lewis C. Van Riper a check of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Dec. 12th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to M. Haas or order Twenty four thousand two hundred fifty Dollars

$24250 00 LEWIS C. VAN RIPER."

478 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, on the day and at the place last aforesaid, the said Moses Haas did give to the said Edwin S. Holmes,

Junior and the said Edwin S. Holmes, Junior did receive from the said Moses Haas the said sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States so received by the said Moses Haas from the said Lewis C. Van Riper.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States and a check of the tenor following, that is to say:

"No. A 1788. HOBOKEN, N. J., *Dec. 30th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to the order of M. Haas Twenty-five hundred and twenty-five 00/100 Dollars.

$2525.00 (Not over three thousand $3000.)

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, and on the thirty-
479 first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of Twenty-five thousand dollars in the national currency and money of the said United States, and a check of the following tenor, that is to say:

"No. 1791. HOBOKEN, N. J., *Dec.* 31, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas ($38,292.90) Thirty-eight thousand two hundred ninety-two & 90/100 Dollars.

$38,292.90

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, confederation and agreement, and to further effect the object thereof, at the District aforesaid, and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of twenty-seven thousand and twenty-five dollars in the national currency and money of the said United States.

480 Against the form of the statute in such case made and provided, and against the peace and government of the said United States.

MORGAN H. BEACH,
Attorney for the United States in and for the District of Columbia.

(Endorsed:) No. 24866. United States vs. Edwin S. Holmes, Junior, Frederick A. Peckham, and Moses Haas. Violation of Section 5440 R. S. U. S. as amended. Witnesses: Richard Cheatham, Wm. H. Moran, Wm. P. Walsh, Louis C. Van Riper, Wm. M. Judd, Frederick A. Peckham, Moses Haas, Victor H. Olmstead, Wm. P. McCabe, Chas. C. Clark, Louis H. Mercer, B. C. White, Steven D. Fessenden, James H. Blodgett, Harvey Jordan, James Wilson, H. W. Degranges, Samuel R. Baulsir. A true bill. Sam'l C. Smoot, Foreman.

481 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court, as to Peckham and Haas.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30th day of October, 1908.

(Signed) HARRY M. CLABAUGH, [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk*.

482 In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to whom these presents come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

483 *Indictment.*

Filed in Open Court, August 22, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1905.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath, do present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the second day of June, in the year of our Lord one thousand nine hundred and four, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant Statistician, and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid when-

484 ever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the

other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by the States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; and that during the time and times aforesaid after the said statistician or the said associate statistician had in the manner aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that when-
485 ever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, as a matter of course in the ordinary routine of his office, and relying upon the proper performance of their duties in the preparation of said report by the said statistician and the said associate statistician, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued, and published by the said statistician or by the said associate statistician acting in his place and stead.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said reports were intended to be as nearly fair, impartial, correct and accurate as it was possible for such reports to be; and the said reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau were charged with the duty of honestly and in good faith assisting in the preparation of the said re-
486 ports and of carefully guarding and keeping secret and of not divulging to any person outside of said Bureau any information acquired by him or them in such preparation of said reports, until said reports had been prepared, officially approved, issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as the matters and things so officially made public in said reports.

And that among the said crop reports so required by law to be prepared, approved, issued and published by the Department of Agriculture as aforesaid, was a report upon the condition of the cot-

ton crop, which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December, in each year.

That on the sixteenth day of November, in the year of our Lord one thousand nine hundred and three, and thence continuously until the ninth day of June, in the year of our Lord one thousand nine hundred and five, one Edwin S. Holmes, Junior, late of the District aforesaid, held and occupied the said office of associate statistician, and as such associate statistician was charged with the duties hereinbefore set forth; all and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, Junior, and to a certain Frederick A. Peckham, and to a certain Moses Haas, both late of the District aforesaid, at the time of the commission by them of the offence hereinafter set forth.

487 And the Grand Jurors aforesaid, upon their oath aforesaid do further present:

That on the second day of June, in the year of our Lord one thousand nine hundred and four, and at the District aforesaid, the said Edwin S. Holmes, Junior, and said Frederick A. Peckham, and said Moses Haas, unlawfully did conspire, combine, confederate and agree together, to commit an offense against the said United States, that is to say, the offense of misconduct on the part of him, the said Edwin S. Holmes, Junior, in his said office of associate statistician, in the said Department of Agriculture, to be done and committed by him, the said Edwin S. Holmes, Junior, in the dishonest manner and through and by the means of the dishonest scheme and arrangement following, that is to say:

That they, the said Frederick A. Peckham, and the said Moses Haas should and would procure some other person or persons possessed of money who was not employed in or connected with said Bureau and who should and would, with the guidance and assistance of information to be furnished by the said Edwin S. Holmes, Junior, in contravention of his said duties as said associate statistician, and in violation of the confidence reposed in him by the said Secretary of Agriculture, engage in buying and selling cotton as hereinafter set forth; and that he, the said Edwin S. Holmes, Junior, should and would in so far as in him the power lay, some time in advance of the official issuance and publication of each of said cotton crop reports, and in contravention of his duties in the premises as such as-

488 sociate statistician, furnish to the said Frederick A. Peckham and to the said Moses Haas, or directly to such person or persons so to be procured by the said Frederick A. Peckham and the said Moses Haas, before the official issuance and publication of each of said cotton crop reports as hereinbefore set forth, and in advance of the time or times when the same could legally be made public, the facts and figures and other information which were to be contained in said report, and that the said Frederick A. Peckham and the said Moses Haas, whenever such information was so furnished to them or either of them should and would before the official issuance and

publication of said report, communicate the said information to said person or persons so to be procured by them, the said Frederick A. Peckham and the said Moses Haas; and that thereupon the said person or persons so to be procured by the said Frederick A. Peckham and the said Moses Haas should and would, and before the official issuance and publication of said report, and with the aid and guidance of said information so furnished by the said Edwin S. Holmes, Junior, buy or sell cotton in large quantities, as the case might be, according as the market price of cotton might be affected in the one way or the other by the information contained in said report when the same should be officially approved by the Secretary of Agriculture and issued and published; and that after said report last mentioned had been so officially approved and issued and published, the said person or persons last mentioned should and
489 would sell or buy, as the case might be, large quantities of cotton corresponding in amount to the quantities so bought or sold before the official issuance and publication of said report, and would thereby make large gains and profits; and that such large gains and profits so made would thereafter be divided among such person or persons last aforesaid and the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas, in proportion to be agreed upon by them.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Frederick A. Peckham, at the District aforesaid on the sixth day of August, in the year of our Lord one thousand nine hundred and four did write and send by telegraph to one Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"16 WASHINGTON, D. C., *Aug.* 6–04.

L. C. Vanriper, Room 1001, No. 20 Broad St., N. Y.:

Come to Washington at once wire me Raleigh hotel time of arrival don't advise Mrs. P.

FRED. 1–19 p. m."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further
490 effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the seventh day of August, in the year of our Lord one thousand nine hundred and four, did meet the said Lewis C. Van Riper, who was not during the time and times aforesaid employed in or connected with said Bureau, and did then and there cause the said Lewis C. Van Riper to meet the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, and on the eighteenth day of August, in the year of our Lord one thousand nine hundred

and four, the said Edwin S. Holmes, Junior, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 19, '04.

DEAR MR. VAN RIPER: Other parties have changed plans slightly and I think it advisable for you to know about it.

Can't you come here Saturday night or Sunday? If not, I might be able to go to N. Y. Saturday afternoon. Write me on receipt of this, and, if you decide to come here, tell me when to meet you and where.

Yours, H."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said
491 Edwin S. Holmes, Junior, on the twenty-first day of August, in the year of our Lord one thousand nine hundred and four did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say

"AUG. 21, '04.

DEAR MR. VAN RIPER: Yours received. That matter can wait a few days. Better have P. come as I can't get away before Saturday afternoon.

Just getting over a bad chill. Hope to be O. K. to-morrow.

Yours, H.

You got my initials wrong on last letter."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York, in the State of New York a letter of the tenor following, that is to say:

"AUG. 30, '04.

If you have bought any of that stuff sell it out at once, and *sell*
492 as much as you can in addition. We are going to show a very slight decline, and, as this is totally unexpected, it will send things down like fury.

Other parties will close out tomorrow, and sell on Thursday. Where is P?

Tear this up.

H.

It may go up a little before Friday but probably not."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., *Aug.* 31, 1904.

L. C. Van Riper, Esq., 108 Fulton St., N. Y. City.

DEAR VAN: About 85. It will surprise everybody and cause big drop—is opinion of best experts. There will be things doing *sure*. A drop of only (about) six points. This is one of the highest averages for this (Sept.) month ever known. Is way above the 10 year average. Tear this up. Do all you can.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further
493 effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York another letter of the tenor following, that is to say:

"WASHINGTON, D. C., 8/31, 1904.

10.30 P. M.

Letter No. 2.

Party for Price here tonight to make sure of figures. Tomorrow (Thursday) they are going to sell all they can without breaking market if they can. It may break tomorrow Saturday soon as report is out (perhaps before) they cut loose—selling everything in sight. Get in tomorrow early. *Be sure to close out Friday* as soon as effect of report has been shown.

No market Saturday (Holiday) & none Monday so I understand. This is best chance we will have.

Destroy."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham a/k/a the said Edwin S. Holmes, Junior, by means of the letters hereinbefore set forth, and before the official issuance and publication of the cotton crop report in the month of September, in the year of our Lord one thousand nine hundred and four, so far as in the said Edwin S. Holmes, Junior, the power lay, did furnish
494 to the said Lewis C. Van Riper the facts, figures and information to be contained in said cotton crop report so to be issued and published on or about the third day of September in said last mentioned year.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the said Lewis C. Van Riper, with the guidance and assistance of the facts, figures and information so as last aforesaid furnished to him by the said Edwin S. Holmes, Junior, and by the said Frederick A. Peckham, did on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the second day of September, in the same year, and before the official issuance and publication of the cotton crop report on said last mentioned day, sell large quantities of cotton at the prices then prevailing in the open market; and that on said last mentioned day the said cotton crop report was officially issued and published, and that after the said official issuance and publication of said last mentioned cotton crop report there was a decline in the market price of cotton; and that thereupon, and after such official issuance and publication of said last mentioned report and after said decline in the market price of cotton the said Lewis C. Van Riper bought large quantities of cotton corresponding in quantity with the amounts so theretofore sold by him and at prices lower than those at which he had so sold said cotton, and did thereby make large gains and profits, to
495 wit, gains and profits to the amount of twenty-six hundred and eighty dollars.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of One hundred and fifty dollars in the national currency and money of the said United States, and three checks drawn by the said Lewis C. Van Riper to the order of said Frederick A. Peckham, one of said checks being for the sum of two hundred and twenty dollars and another of said checks being for the sum of three hundred dollars, and the third of said checks being for the sum of six hundred and seventy dollars, a more particular description of which said checks for the sums of two hundred and twenty dollars and three hundred dollars the Grand Jurors aforesaid are unable to give, and the said check for the sum of six hundred and seventy dollars being of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Sept.* 3rs, 1904

The Second National Bank of Hoboken. Through the New York Clearing House Association.

496 Pay to F. A. Peckham or order Six hundred seventy & no/100 Dollars.

$670.00/100. LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the

object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did give to the said Lewis C. Van Riper a receipt of the tenor following, that is to say:

"SEPT. 3/04.

Rec'd from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, $220.00 respectively, paying all acc'ts in full to date.

F. A. PECKHAM."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did endorse the said check for the sum of six hundred and seventy dollars on the back thereof, the said endorsement being of the tenor following, that is to say: "F. A. Peckham," and did deliver the said last mentioned check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S.
497 Holmes, Junior, on the fifteenth day of September, in the year of our Lord one thousand nine hundred and four, did endorse the check last mentioned on the back thereof, the said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and on the day and at the place last aforesaid did present the said check last mentioned to the Central National Bank of Washington City, and did receive in exchange therefor the sum of six hundred and seventy dollars in the national currency and money of the said United States.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., 9/8, 1904.

Destroy.

V.:

There will be a depreciation of 20 points in Spring Wheat on 10th—or from 87.5 (last report) to 67.5. Reduction may be more, not less. Such a great reduction will no doubt raise the price 5 to 10c inside of 2 or 3 days.

This is best chance will have on wheat. Get in heavy.

F."

498 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"Long conference Sunday between Colonel and man. S. has done something P. does not like. Is going, without S. knowing it, if possible, to put price up high as possible before 1st. Then if figures show 79 say, or better, instead — 81.4 as before, something will drop. Belief here is you can get it going and coming. P. going to break S. later, if he can.

Destroy sure."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York, in the State of New York, a telegram of the tenor following, that is to say:

"WASH'N, D. C., *Sep.* 28.

L. C. Van Riper:

499 Nothing new since telephoning. Will not phone at nine morning unless something developes.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the City of New York in the State of New York a letter of the tenor following, that is to say:

"TUESDAY, WASHINGTON, D. C., *Sept.* 28, 1904.

DEAR VAN: As stated over the phone party went to B.—phoned N. Y. end evidently did not say anything definite as to movements—but inference was that he was going to get in and buy. When I said over 'phone—party thinks—only advised that Colonel inferred—Not intended as my "thinking." Regret cannot get at it more definitely—and that program we were told about has not been, so far, carried out. From talks Col. has had with man he believes they will start to buy tomorrow if they did not today. Note prices have advanced a little. Remember that Mr. P. (in N. Y.) would not say over phone to Balt. things he would if talking face to face, hence my aim on phone, and in this, to give you as good an idea as we have as to plans.

No use phoning in A. M. So wired tonight after talking with Col.—since talking with you on phone.

500 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Sept.* 29, 1904—1:30 P. M.

L. C. Van Riper, 108 Fulton Street, New York:

Will write fully late tonight special delivery.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"9 P. M. Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.:

At 12 tonight party goes to N. Y. Before 8 a. m. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points—that is from 84.4. Also that Texas report from present data shows a drop from 76 to 49. Something remarkable. Col. padded

501 matters, making very strong, information which P. will get tomorrow—so he will be *sure* to jump right in & buy. Also party will be put in for usual ten thousand. Deterioration promises to be big—very. Reports not all in, but important ones rec'd. All show above.

Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early & heavy & get all back & more."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper two checks of the tenor following, that is to say:

No. A 1625. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

(Not Over One Hundred Dollars.)

Pay to the order of F. A. Peckham One hundred & 00/100 Dollars.
$100 00/100. LEWIS C. VAN RIPER."

No. A 1626. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association,

(Not Over One Hundred Dollars.)

Pay to the order of F. A. Peckham One hundred & 00/100 Dollars
$100 00/100. LEWIS C. VAN RIPER."

502 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid, on the twenty-seventh day of September, in the year of Our Lord one thousand nine hundred and four, did endorse said check bearing number A 1626 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Holmes.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Holmes, on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr." and did present the same to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham, at the District aforesaid on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1625 on the
503 back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, at the District aforesaid, on the first day of October, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "Signature of check O. K. E. S. Holmes, Jr." and did present the said last mentioned check to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham at the District aforesaid, did on the third day of October,

in the year of our Lord one thousand nine hundred and four write and send by telegraph to the said Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

504 "WASHINGTON, D. C., *Oct.* 3, 1904.

L. C. Vanriper, 108 Fulton Street, New York:

Successful bidder best contract ever had.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Moses Haas on the twenty-fifth day of October, in the year of our Lord one thousand nine hundred and four did come to the District aforesaid and did there remain until the thirtieth day of the same month, for the purpose of receiving from the said Edwin S. Holmes, Junior, facts, figures and information which were to be contained in the cotton crop report which was to be issued and published by the said Department of Agriculture on or about the third day of December in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Moses Haas, on the twenty-fifth day of November, at the District aforesaid, did give to the said Lewis C. Van Riper the sum of ten thousand dollars to be used by the latter in the purchase or sale of cotton before the publication of said report on or about said third day of December, in the year of our Lord one thousand nine hundred and four.

505 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, on the twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers days between the said day last mentioned and the third day of December, in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas did furnish to the said Lewis C. Van Riper facts, figures and the information which were to be contained in the said cotton crop report which was to be issued and published on said last mentioned day.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That the said Lewis C. Van Riper with the aid and guidance of said facts, figures and information so furnished to him by said Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas, as aforesaid, did on said twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the third day of December, in the year of our Lord one thousand nine hundred and four, sell large quantities of cotton to be delivered in the month of March

next following; that upon the said third day of December, in the year of our Lord one thousand nine hundred and four the cotton crop report for that month was officially approved by the Secretary of Agriculture and was issued and published; that after the
506 issuance and publication of said report the market price of cotton to be delivered in the month of March next following greatly decreased, and the said Lewis C. Van Riper thereupon and at such decreased prices bought large quantities of cotton corresponding in amount to such quantities so theretofore sold by him, and that the said Lewis C. Van Riper did thereby make large gains and profits amounting in the aggregate to a large sum, to wit, to the sum of two hundred and ten thousand two hundred and seventy-one dollars and sixty-two cents.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Moses Haas on the twelfth day of December, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States, and did on the day and at the place last aforesaid, receive from the said Lewis C. Van Riper a check of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Dec. 12th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to M. Haas or order Twenty four thousand two hundred fifty Dollars.

$24250.00

LEWIS C. VAN RIPER."

507 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, on the day and at the place last aforesaid, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the said sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States so received by the said Moses Haas from the said Lewis C. Van Riper.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States and a check of the tenor following, that is to say:

"No. A1788. HOBOKEN, N. J., *Dec. 30th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas Twenty five hundred twenty-five 00/100 Dollars.

$2525.00 . (Not over three thousand 3000)

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful con-
508 spiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of twenty-five thousand dollars in the national currency and money of the said United States, and a check of the tenor following, that is to say

No. A1791. HOBOKEN, N. J., *Dec. 31st*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas ($38,292.90) Thirty-eight thousand two hundred ninety-two & 90/100 Dollars.

$38,292.90/.

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, at the District aforesaid and on the thirty-first day of December, in the year of our Lord one thousand nine
509 hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of twenty-seven thousand and twenty-five dollars in the national currency and money of the said United States.

Against the form of the statute in such case made and provided, and against the peace and government of the said United States.

MORGAN H. BEACH,

Attorney of the United States in and for the District of Columbia.

(Endorsed:) No. 24,867. United States vs. Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas. Violation of Section 5440, R. S. U. S., as amended. Witnesses: Richard Cheatham, William H. Moran, Wm. P. Walsh, Louis C. Van Riper, William M. Judd, Frederick A. Peckham, Moses Haas, Victor H. Olmstead, Wm. P. McCabe, Chas. C. Clark, Louis H. Mercer, B. C. White, Steven D. Fessenden, James H. Blodgett, Harvey Jordan, James Wilson, H. W. Desgranges, Samuel R. Baulsir. A true bill. Sam'l C. Smoot, Foreman.

510 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court as to Peckham and Haas.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30 day of October, 1908.

(Signed) HARRY M. CLABAUGH, [L. S.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

511 In the Supreme Court of the District of Columbia.

TRANSCRIPT OF RECORD.

To all to Whom These Presents Come, Greeting:

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, among others, were the following proceedings, to wit:

512 Filed in Open Court Aug. 22, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, April Term, A. D. 1905.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia, upon their oath, do present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the second day of June, in the year of our Lord one thousand nine hundred and four, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employé of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

513 And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employés of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employés aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called

crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; and that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said Department, and relying upon the
514 proper performance of his duty in the preparation of said report by the said statistician, or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were intended to be as nearly fair, impartial, correct and accurate as it was possible for such reports to be; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did effect to a greater or less extend the market price of the several crops mentioned therein.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employés aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter
515 for use in the preparation of said crop reports, or any of the matter and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employés of the said Bureau of Statistics,

and in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employés of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture, and so issued and published by the Department of Agriculture as aforesaid, was a report upon the condition of the cotton crop of the United States, which became known as and was called the cotton crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year;

That on the sixteenth day of November in the year of our Lord one thousand nine hundred and three, and thence continuously until the ninth day of June in the year of our Lord one thousand nine hundred and five, one Edwin S. Holmes, Junior, held and oc-
516 cupied the office of, and was, such associate statistician in said Bureau of Statistics in the Department of Agriculture, and as such associate statistician the said Edwin S. Holmes, Junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician from his office, the said Edwin S. Holmes, Junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employés of said Bureau as aforesaid all of the said crop reports including the said cotton crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician from his office, in the performance of his duties in preparing said crop reports, including the said cotton crop reports, he, the said Edwin S. Holmes, Junior, did before the official approval and issuance and publication of each of said crop reports, including the said cotton crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton crop reports, were prepared and of the matters and things and other information which were to be contained in each of said crop reports including said cotton crop reports.

And that during the period last aforesaid it was the duty of the said Edwin S. Holmes, Junior, as such associate statistician
517 to honestly and carefully guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter from which said crop reports including said cotton crop reports were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton crop reports, knowledge of which was so as aforesaid acquired by him the said Edwin S. Holmes, Junior, as such associate statistician, until the said reports had been prepared, officially approved and issued and published as aforesaid, and it was the duty

of the said Edwin S. Holmes, Junior, as said associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so as aforesaid acquired by him except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, Junior, and to a certain Frederick A. Peckham and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

518 That on the second day of June in the year of our Lord one thousand nine hundred and four, and at the District aforesaid, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas, all late of the District aforesaid, the said Frederick A. Peckham and the said Moses Haas not being then and there employed in or connected with said Bureau of Statistics, unlawfully did conspire, combine, confederate and agree together, to commit an offense against the said United States, that is to say, the offense of misconduct on the part of him, the said Edwin S. Holmes, Junior, in his said office of associate statistician in the said Department of Agriculture, to be done and committed by him the said Edwin S. Holmes, Junior, in the dishonest manner and through and by means of the dishonest scheme and arrangement following, that is to say:

That in violation of the said duty of him the said Edwin S. Holmes, Junior, as said associate statistician, to honestly and carefully guard and keep secret all statistics and statistical matter and matters and things and other information knowledge of which was so as aforesaid acquired by him as such associate statistician, in prepar*d*ing and in assisting in preparing the said cotton crop reports in the manner as aforesaid, and in advance of the official issuance and publication of each of said cotton crop reports as hereinbefore set forth, and in advance of the time or times when the matters and things and other information contained in each of said cotton crop reports could lawfully be made public, and to prevent, obstruct and impair the orderly and due administration of the business and affairs of said Department of Agriculture, and to advance the

519 pecuniary interests of them the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas and to the prejudice of the said United States, he, the said Edwin S. Holmes, Junior, should and would in so far as in him the power lay furnish the statistics and statistical matter and matters and things and other information knowledge of which was so as aforesaid acquired by him, the said Edwin S. Holmes, Junior, as such associate statistician in preparing and assisting in preparing each of said cotton crop reports, to the said Frederick A. Peckham and to the said Moses

Haas, and to either of them, and to any other person or persons possessed of money and not employed in or connected with said Bureau of Statistics who should be procured by the said Peckham or the said Haas or by either of them, in the manner and for the purpose hereinafter set forth; and that said Frederick A. Peckham and said Moses Haas, or either of them, whenever such information should be so as aforesaid furnished to them, or either of them, by the said Edwin S. Holmes, Junior, should and would make such use of the said information so furnished to them or either of them as would in the judgment of them or either of them advance the pecuniary interests of them the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas, and that said Frederick A. Peckham and the said Moses Haas, or either of them, should and would, with the guidance and assistance of such information so to be furnished by the said Edwin S. Holmes, Junior, engage in buying and selling cotton as hereinafter set forth; and

520 that they the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas should and would procure some other person or persons possessed of money and not employed in or connected with said Bureau of Statistics to whom the said Frederick A. Peckham and the said Moses Haas, or either of them, whenever such information should be so furnished to them or either of them by the said Edwin S. Holmes, Junior, and before the official issuance and publication of each of said cotton crop reports should and would communicate the said information so as aforesaid furnished by the said Edwin S. Holmes, Junior, to said person or persons so to be procured as aforesaid who should and would engage in buying and selling cotton as hereinafter set forth; and that whenever such information should be by or through the said Edwin S. Holmes, Junior, in violation of his said duty as aforesaid, furnished to the said Frederick A. Peckham and the said Moses Haas, and to the said person or persons so to be procured as aforesaid, or either of them, and before the official issuance and publication of any one of said cotton reports, and with the guidance and assistance of such information so to be furnished as aforesaid, if they, the said Edwin S. Holmes, Junior, and Frederick A. Peckham and Moses Haas and said person or persons to be procured as aforesaid, or either of them, should believe that the said cotton crop report last mentioned when the same should be officially issued and published would cause the market price of cotton to increase, that they, the said Frederick A. Peckham and the said Moses Haas and said person or persons to be procured as aforesaid, or either of

521 them, should and would buy large quantities of cotton; and that after the said cotton crop report last mentioned had been issued and published and the market price of cotton had increased, that they, the said Frederick A. Peckham and said Moses Haas and said person or persons to be procured as aforesaid or such of them as had so bought cotton, should and would sell at such increased price the cotton so theretofore bought by them or him, and would thereby make large gains and profits: but if they, the said Edwin S. Holmes, Junior, and said Frederick A. Peckham and said Moses Haas

and said person or persons to be procured as aforesaid, or either of them, should believe that the said cotton crop report last mentioned when the same should be officially issued and published would cause the market price of cotton to decrease, that they, the said Peckham and the said Haas and said person or persons to be procured as aforesaid should and would sell large quantities of cotton, and that after the said cotton crop report last mentioned had been issued and published and the market price of cotton had decreased, that they, the said Frederick A. Peckham and said Moses Haas and said person or persons to be procured as aforesaid or such of them as had so sold cotton, should and would buy at such decreased price large quantities of cotton equal in amount to the quantities so sold by them or him, and would thereby make large gains and profits; and that all of such large gains and profits so made as aforesaid would thereafter be divided among such person or persons to be procured as
522 aforesaid and the said Edwin S. Holmes, Junior, and said Frederick A. Peckham and said Moses Haas in certain proportions to be agreed upon by them.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in pursuance of the said unlawful conspiracy, combination, confederation and agreement and to effect the object thereof, the said Frederick A. Peckham, on to wit the third day of August, A. D. one thousand nine hundred and four, and, to wit, at the District aforesaid, did procure one Lewis C. Van Riper, who was then and there a person possessed of money, and who was not then and there employed in or connected with the said Bureau of Statistics, to buy and sell cotton in the manner hereinbefore described, with the guidance and assistance of said information to be furnished to him, the said Lewis C. Van Riper, by the said Edwin S. Holmes, Junior, in the manner and at the times as hereinbefore set forth.

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Frederick A. Peckham at to wit the District aforesaid on the sixth day of August in the year of our Lord one thousand nine hundred and four did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"16. WASHINGTON, D. C., *Aug* 6 04

L. C. Vanriper, Room 1001, No. 20 Broad St., N. Y.:

Come to Washington at once wire me Raleigh hotel time of arrival don't advise Mrs. P.

FRED. 1:19 p. m."

523 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the seventh day of August, in the year of our Lord one thousand nine hundred and four, did meet the said Lewis C. Van Riper, and did then and there cause the said Lewis C. Van Riper to meet the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, and on the eighteenth day of August, in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 18, 1904.

DEAR MR. VAN RIPER: Other parties have changed plans slightly and I think it advisable for you to know about it.

Can't you come here Saturday night or Sunday? If not, I might be able to go to N. Y. Saturday afternoon. Write me on receipt of this and, if you decide to come here, tell me when to meet you and where.

Yours, H."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the
524 said Edwin S. Holmes, Junior, on the twenty-first day of August, in the year of our Lord one thousand nine hundred and four did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 21, '04.

DEAR MR. VAN RIPER: Yours received. That matter can wait a few days. Better have P. come as I can't get away before Saturday afternoon.

Just getting over a bad chill. Hope to be O. K. tomorrow.

Yours, H.

You got my initials wrong on last letter."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the thirtieth day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 30, '04.

If you have bought any of that stuff sell it out at once, and *sell* as much as you can in addition. We are going to show very slight decline, and, as this is totally unexpected, it will send things down like fury.

Other parties will close out tomorrow, and sell on Thursday. Where is P.?

525 Tear this up.

H.

It may go up a little before Friday but probably not."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit, at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the state of New York a letter of the tenor following, that is to say:

"WASHINGTON, D. C., *Aug.* 31, 1904.

L. C. Van Riper, Esq., 108 Fulton St., N. Y. City.

DEAR VAN: About 85. It will surprise everybody and cause big drop—is opinion of best experts. There will be things doing sure. A drop of only (about) six points. This is one of the highest averages for this (Sept.) month ever known. Is way above the 10 year average. Tear this up. Do all you can.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the
526 State of New York another letter of the tenor following, that is to say:

"WASHINGTON, D. C., 8/31, 1904.

10.30 P. M.

Letter No. 2.

Party for Price here tonight to make sure of figures. Tomorrow (Thursday) they are going to sell all they can without breaking market if they can. It may break tomorrow Saturday soon as report is out (perhaps before) they cut loose—selling everything in sight. Get in tomorrow early. *Be sure to close out Friday* as soon as effect of report has been shown.

No market Saturday (Holiday) & none Monday so I understand. This is the best chance we will have.

Destroy."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham and the said Edwin S. Holmes, Junior, by the means hereinbefore set forth, and before the official issuance and publication of the cotton crop report in the month of September, in the year of our Lord one thousand nine hundred and four, so far as in the said Edwin S. Holmes, Junior, the power lay, did furnish to the said Lewis C. Van Riper the matters and things and other information to be contained in said cotton crop report so to be issued and published on or about the third day of September in said last mentioned year.

527 And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement and to further effect the object thereof, and to wit at the District aforesaid, the said Lewis C. Van Riper, with the guidance and assistance of the matters and things and other information so as last aforesaid furnished to him by the said Edwin S. Holmes, Junior, and by the said Frederick A. Peckham, did on the thirtieth day of August, in the year of our Lord, one thousand nine hundred and four, and on divers other days between said last mentioned day and the second day of September in the same year, and before the official issuance and publication of the cotton crop report on said last mentioned day, sell large quantities of cotton at the prices then prevailing in the open market; and that on said last mentioned day the said cotton crop report was officially issued and published, and that after the said official issuance and publication of said last mentioned cotton crop report there was a decline in the market price of cotton; and that thereupon, and after such official issuance and publication of said last mentioned report and after said decline in the market price of cotton the said Lewis C. Van Riper bought large quantities of cotton corresponding in quantity with the amounts so theretofore sold by him and at prices lower than those at which he had so sold said cotton, and did thereby make large gains and profits, to wit, gains and profits to the amount of twenty-six hundred and eighty dollars.

528 And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of one hundred and fifty dollars in the national currency and money of the said United States, and three checks drawn by the said Lewis C. Van Riper to the order of said Frederick A. Peckham, one of said checks being for the sum of two hundred and twenty dollars, and another of said checks being for the sum of three hundred dollars, and the third of said checks being for the sum of six hundred and seventy dollars, a more particular description of which said checks for the sum of two hundred and twenty dollars and three hundred dollars the Grand Jurors aforesaid are unable to give, and the said check for the sum of six hundred and seventy dollars being of the tenor following, that is to say:

"No. XXX. "Hoboken, N. J., *Sept.* 3*rd*, 1904

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to F. A. Peckham or order Six hundred seventy & no 100 Dollars

$670.00 100. LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further
529 effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did give to the said Lewis C. Van Riper a receipt of the tenor following, that is to say:

"SEPT. 3/04.

Rec'd from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, $220.00, respectively, paying all acc'ts in full to date. F. A. PECKHAM."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did endorse the said check for the sum of six hundred and seventy dollars on the back thereof, the said endorsement being of the tenor following, that is to say: "F. A. Peckham," and did deliver the said last mentioned check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the fifteenth day of September, in the year of our Lord one thousand nine hundred and four, did endorse the check last mentioned on the back thereof, the said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and on the
530 day and at the place last aforesaid did present the said check last mentioned to the Central National Bank of Washington City, and did receive in exchange therefor the sum of six hundred and seventy dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"Long conference Sunday between Colonel and man. S. has done something P. does not like. Is going, without S. knowing it, if possible, to put price up high as possible before 1st. Then if figures show 79 say, or better, instead of 81.4 as before, something will drop. Belief here is you can get it going and coming. P. going to break S later, if he can.

Destroy Sure."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at to wit the District aforesaid, the said Frederick

A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

531 "WASH'N, D. C., *Sep.* 28, —.

L. C. Van Riper, 108 Fulton St., N. Y'k:

Nothing new since telephoning. Will not phone at nine morning unless something develops.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"TUESDAY, WASHINGTON, D. C., *Sept.* 28, 190-.

DEAR VAN: As stated over phone party went to B.—phoned N. Y. and evidently did not say anything *definite* as to movements—but inference was that he was going to get in and buy. When I said over phone—party thinks—only advised what Colonel inferred—Not intended as my "thinking." Regret cannot get at it more definitely—and that programme we were told about has not been, so far, carried out. From talk Col has had with man he believes they will start to buy tomorrow if they did not today. Note prices have advanced a little. Remember that Mr. P. (in N. Y.) would not say over phone to Balt. things he would if talking face to face, hence my aim on phone and in this, to give you as good an idea as we have as to plans.

532 No use in phoning A. M. So wired tonight after talking with Col.—since talking to you on phone.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Sept.* 29, 1904—1:30 P. M.

L. C. Van Riper, 108 Fulton Street, New York

Will write fully late tonight special delivery.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the state of New York a letter of the tenor following, that is to say:

"9 P. M.—Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.:

At 12 tonight party goes to N. Y. Before 8 a. m. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points; that is from 84.4. Also that Texas report from present data
533 shows a drop from 76 to 49. Something remarkable. Col. padded matters, making very strong information which P. will get tomorrow—so he will be *sure* to jump right in & buy. Also party will be put in for usual ten thousand. Deterioration promises to be big—very. Reports not all in, but important ones rec'd all show above.

Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early & heavy & get all back & more."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper two checks of the tenor following, that is to say:

"No. A 1625. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

(Not Over One Hundred Dollars.)

Pay to the order of F. A. Peckham One hundred & 00 100 Dollars.
LEWIS C. VAN RIPER."

"No. A 1626. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

(Not Over One Hundred $100s.)

Pay to the order of F. A. Peckham One hundred & 00 100 Dollars.
$100 00
LEWIS C. VAN RIPER."

534 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Frederick A. Peckham to wit at the District aforesaid, on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A1625 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Holmes.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Holmes, on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and did present the same to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Frederick A. Peckham to wit at the District aforesaid on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1625 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Edwin S. Holmes, Junior.

535 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, to wit at the District aforesaid, on the first day of October, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "Signature of check O. K. E. S. Holmes, Jr.," and did present the said last mentioned check to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Frederick A. Peckham to wit at the District aforesaid, did on the third day of October, in the year of our Lord one thousand nine hundred and four write and send by telegraph to the said Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Oct.* 3, 1904.

L. C. Vanriper, 108 Fulton Street, New York:

Successful bidder best contract ever had.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, the said Moses Haas on the twenty-fifth day of November, in the year of our Lord one thousand nine hundred and four did come to the District aforesaid and did there remain
536 until the thirtieth day of the same month, for the purpose of learning from the said Edwin S. Holmes, Junior, matters and things and other information which were to be contained in the cotton crop report which was to be issued and published by the Department of Agriculture on or about the third day of December in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, the said Moses Haas, on the twenty-fifth day of November, in the year last aforesaid, did give to the said Lewis C. Van Riper the sum of ten thousand dollars to be used by the latter in the purchase or sale of cotton before the publication of said cotton crop report on or about said third day of December, in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, on the twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between the said day last mentioned and the third day of December in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas did furnish to the said Lewis C. Van Riper matters and things and other information which were to be contained in the said cotton crop
537 report which was to be issued and published as aforesaid on said last mentioned day.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said Lewis C. Van Riper with the aid and guidance of said matters and things and other information so furnished to him by said Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas as aforesaid, and to wit at the District aforesaid, did on said twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between the said last mentioned day and the third day of December, in the year of our Lord one thousand nine hundred and four sell large quantities of cotton to be delivered in the month of March next following; that upon the said third day of December, in the year of our Lord one thousand nine hundred and four the cotton crop report for that month was officially approved by the Secretary of Agriculture and was issued and published; that after the issuance and publication of said report the market price of cotton to be delivered in the month of March next following greatly decreased, and the said Lewis C. Van Riper thereupon and at such decreased prices bought large quantities of cotton equal in amount to such quantities so theretofore sold by

him, and that the said Lewis C. Van Riper did thereby make large gains and profits amounting in the aggregate to a large sum, to wit, to the sum of two hundred and ten thousand two hundred and seventy-one dollars and sixty-two cents.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to
538 further effect the object thereof, and to wit at the District aforesaid, the said Moses Haas on the twelfth day of December, the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States, and did on the day and at the place last aforesaid receive from the said Lewis C. Van Riper a check of the tenor following, that is to say:

"No. XXX HOBOKEN, N. J., *Dec. 12th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to M. Haas or order Twenty-four thousand two hundred fifty Dollars.

$24250 00/.

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, on the day and at the place last aforesaid, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the said sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States so received by the said Moses Haas from the said Lewis C. Van Riper.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine
539 hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States, and a check of the tenor following, that is to say:

"No. A 1788. HOBOKEN, N. J., *Dec. 30th*, 1904.

The Second National Bank of Hoboken, Through New York Clear- Clearing House Association.

Pay to the order of M. Haas Twenty-five hundred twenty five 00/100 Dollars.

$2525 00. (Not over three thousand $3000 8.)

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, and to wit at the District aforesaid, and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of twenty-five thousand dollars in the national currency and money of the said United States, and a check of the tenor following, that is to say:

"No. A 1791. HOBOKEN, N. J., *Dec.* 31*st*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas ($38,292.90) Thirty-eight thousand two hundred ninety-two & 90/100 Dollars.

$38,292.90/

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further
540 effect the object thereof, and to wit at the District aforesaid, and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof, at to wit the District aforesaid and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of twenty-seven thousand and twenty-five dollars in the national currency and money of the said United States.

Against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Second Count.

And the Grand Jury aforesaid, upon their oath, do further present, That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the second day of June, in the year of our Lord one thousand nine hundred and four, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the
541 time and times aforesaid the said Bureau was under the management of an officer and employé of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that

during the time and times aforesaid there were in said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employés aforesaid of said Bureau, was charged with the *jury* of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating
542 the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; and that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said Department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were intended to be as nearly fair, impartial, correct and accurate as it was possible for such reports to be; and the said crop reports and each of them
543 upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as

aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employés aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matter and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employes of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employes of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture, and so issued and published by the Department
544 of Agriculture as aforesaid, was a report upon the condition of the cotton crop of the United States, which became known as and was called the cotton crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November in the year of our Lord one thousand nine hundred and three, and thence continuously until the ninth day of June in the year of our Lord one thousand nine hundred and five, one Edwin S. Holmes, Junior, held and occupied the office of, and was, such associate statistician in said Bureau of Statistics in the Department of Agriculture, and as such associate statistician the said Edwin S. Holmes, Junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician from his office, the said Edwin S. Holmes, Junior, as such associate statistician, was during that period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employees of said Bureau as aforesaid all of the said crop reports including the said cotton crop reports as aforesaid; and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in
545 the absence of the said statistician from his office, in the performance of his duties in preparing said crop reports, including the said cotton crop reports, he, the said Edwin S. Holmes, Junior,

did, before the official approval and issuance and publication of each of said crop reports, including the said cotton crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton crop reports, were prepared and of the matters and things and other information which were to be contained in each of said crop reports including said cotton crop reports.

And that during the period last aforesaid it was the duty of the said Edwin S. Holmes, Junior, as such associate statistician to honestly and carefully guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter from which said crop reports including said cotton crop reports were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton crop reports, knowledge of which was so as aforesaid acquired by him the said Edwin S. Holmes, Junior, as such associate statistician, until the said reports had been prepared, officially approved and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, Junior, as said associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau any of the statistics and statistical matter and matters and things and
546 other information last aforesaid, knowledge of which was so as aforesaid acquired by him except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises last aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, Junior, and to said Frederick A. Peckham and to said Moses Haas, at the time of the commission by them of the offense hereinafter set forth.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the second day of June in the year of our Lord one thousand nine hundred and four, and at the District aforesaid, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas, the said Frederick A. Peckham and the said Moses Haas not being then and there employed in or connected with said Bureau of Statistics, unlawfully did conspire, combine, confederate and agree together, to defraud the said United States in the dishonest manner and through and by means of the dishonest scheme and arrangement following, that is to say:

That in violation of the said duty of him the said Edwin S. Holmes, Junior, as said associate statistician, to honestly and carefully guard and keep secret all statistics and statistical matter and matters and things and other information knowledge of which was so as aforesaid acquired by him as such associate statistician, in preparing and in assisting in preparing the said cotton crop reports in the manner as aforesaid, and in advance of the official
547 issuance and publication of each of said cotton crop reports as hereinbefore set forth, and in advance of the time or times

when the matters and things and other information contained in each of said cotton reports could lawfully be made public, and to prevent, obstruct and impair the orderly and due administration of the business and affairs of said Department of Agriculture, and to advance the pecuniary interests of them the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas, and to the prejudice of the said United States, he, the said Edwin S. Holmes, Junior, should and would in so far as in him the power lay furnish the statistics and statistical matter and matters and things and other information knowledge of which was so as aforesaid acquired by him, the said Edwin S. Holmes, Junior, as such associate statistician in preparing and assisting in preparing each of said cotton crop reports, to the said Frederick A. Peckham and to the said Moses Haas, and to either of them, and to any other person or persons possessed of money and not employed in or connected with said Bureau of Statistics who should be procured by the said Peckham or the said Haas or by either of them, in the manner and for the purpose hereinafter set forth; and that said Frederick A. Peckham and said Moses Haas, or either of them, whenever such information should be so as aforesaid furnished to them, or either of them, by the said Edwin S. Holmes, Junior, should and would make such use of the said information so furnished to them or either of them as would in the judgment of them or either of them advance

548 the pecuniary interests of them the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas, and that said Frederick A. Peckham and said Moses Haas, or either of them should and would, with the guidance and assistance of such information so to be furnished by the said Edwin S. Holmes, Junior, engage in buying and selling cotton as hereinafter set forth; and that they the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas should and would procure some other person or persons possessed of money and not employed in or connected with said Bureau of Statistics to whom the said Frederick A. Peckham and the said Moses Haas or either of them whenever such information should be so furnished to them or either of them by the said Edwin S. Holmes, Junior, and before the official issuance and publication of each of said cotton crop reports should and would communicate the said information so as aforesaid furnished by the said Edwin S. Holmes, Junior, to said person or persons so to be procured as aforesaid who should and would engage in buying and selling cotton as hereinafter set forth, and that whenever such information should be by or through the said Edwin S. Holmes, Junior, in violation of his said duty as aforesaid, furnished to the said Frederick A. Peckham and the said Moses Haas, and to the said person or persons so to be procured as aforesaid, or either of them, and before the official issuance and publication of any one of said cotton reports, and with the guidance and assistance of such information so to be furnished as aforesaid, if they, the said Edwin S. Holmes, Junior, and Frederick A. Peckham and Moses Haas and said person or persons to be procured as aforesaid,

549 or either of them, should believe that the said cotton crop report last mentioned when the same should be officially

issued and published would cause the market price of cotton to increase, that they, the said Frederick A. Peckham and the said Moses Haas and said person or persons to be procured as aforesaid, or either of them, should and would buy large quantities of cotton; and that after the said cotton crop report last mentioned had been issued and published and the market price of cotton had increased, that they, the said Frederick A. Peckham and said Moses Haas and said person or persons to be procured as aforesaid or such of them as had so bought cotton, should and would sell at such increased price the cotton so theretofore bought by them or him, and would thereby make large gains and profits; but if they, the said Edwin S. Holmes, Junior, and said Frederick A. Peckham and said Moses Haas and said person or persons to be procured as aforesaid, or either of them, should believe that the said cotton crop report last mentioned when the same should be officially issued and published would cause the market price of cotton to decrease, they *they*, the said Peckham and the said Haas and said person or persons to be procured as aforesaid, or either of them, should and would sell large quantities of cotton, and that after the said cotton crop report last mentioned had been issued and published and the market price of cotton had decreased, that they, the said Frederick A. Peckham and Moses Haas and said person or persons to be procured as aforesaid or such of them as had so sold cotton, should and would buy at such decreased price large quantities of cotton equal in amount
550 to the quantities so sold by them or him, and would thereby make large gains and profits; and that all of such large gains and profits so made as aforesaid would thereafter be divided among such person or persons to be procured as aforesaid and the said Edwin S. Holmes, Junior, and said Frederick A. Peckham and said Moses Haas in certain proportions to be agreed upon by them.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid and to effect the object thereof, the said Frederick A. Peckham, on to wit the third day of August, A. D. one thousand nine hundred and four, and, to wit, at the District aforesaid, did procure one Lewis C. Van Riper, who was then and there a person possessed of money, and who was not then and there employed in or connected with the said Bureau of Statistics, to buy and sell cotton in the manner hereinbefore described with the guidance and assistance of said information to be furnished to him, the said Lewis C. Van Riper, by the said Edwin S. Holmes, Junior, in the manner and at the times as hereinbefore set forth.

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to effect the object thereof, the said Frederick A. Peckham, at to wit the District aforesaid on the sixth day of August in the year of our Lord one thousand nine hundred and four did write and send by telegraph to the said Lewis C. Van Riper at the City of New York in
551 the State of New York, a telegram of the tenor following, that is to say:

"16 WASHINGTON, D. C., *Aug.* 6-04.

L. C. Vanriper. Room 1001, No. 20 Broad St., N. Y.:

Come to Washington at once wire me Raleigh hotel time of arrival dont advise Mrs. P.

FRED. 1:19 p. m."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the seventh day of August, in the year of our Lord one thousand nine hundred and four, did meet the said Lewis C. Van Riper, and did then and there cause the said Lewis C. Van Riper to meet the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, and on the eighteenth day of August, in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 18, 1904.

DEAR MR. VAN RIPER: Other parties have changed plans slightly and I think it advisable for you to know it.

Can't you come here Saturday night or Sunday? If not, I might be able to go to N. Y. Saturday afternoon. Write me
552 on receipt of this and, if you decide to come here, tell me when to meet you and where.

Yours, H."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the twenty-first day of August, in the year of our Lord one thousand nine hundred and four did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"AUG. 21, '04.

DEAR MR. VAN RIPER: Yours received. That matter can wait a few days. Better have P. come as I can't get away before Saturday afternoon.

Just getting over a bad chill. Hope to be O. K. tomorrow.

Yours, H.

You got my initials wrong on last letter."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the thirtieth day of August, in

the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city
553 of New York in the State of New York a letter of the tenor following, that is to say:

AUG. 30, '04.

If you have bought any of that stuff sell it out at once, and *sell* as much as you can in addition. We are going to show very slight decline, and, as this is totally unexpected, it will send things down like fury.

Other parties will close out tomorrow, and sell on Thursday. Where is P?

Tear this up. H.

It may go up a little before Friday but probably not."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the state of New York a letter of the tenor following, that is to say

WASHINGTON, D. C., *Aug.* 31, 1904.

L. C. Van Riper, Esq., 108 Fulton St., N. Y. City.

DEAR VAN: About 85. It will surprise everybody and cause big drop—is opinion of best experts. There will be things doing sure. A drop of only (about) six points. This is one of the highest averages for this (Sept.) month ever known. Is way above the 10-year average. Tear this up. Do all you can.

F."

554 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the thirty-first day of August, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York another letter of the tenor following, that is to say:

"WASHINGTON, D. C., S. 31, 1904.

10:30 p. m.

Letter No. 2.

Party for Price here tonight to make sure of figures. Tomorrow (Thursday) they are going to sell all they can without breaking market if they can. It may break tomorrow Saturday as soon as report is out (perhaps before) they cut loose, selling everything in sight. Get in tomorrow early. Be sure to close out Friday as soon as effect of report has been shown.

No market Saturday (Holiday) & none Monday so I understand.

This is best chance we will have.

Destroy."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham and the said Edwin S. Holmes Junior, by the means of the letters hereinbefore in this count set forth, and before the official issuance and publication of the
555 cotton crop report in the month of September, in the year of our Lord one thousand nine hundred and four, so far as in the said Edwin S. Holmes, Junior, the power lay, did furnish to the said Lewis C. Van Riper the matters and things and other information to be contained in said cotton crop report so to be issued and published on or about the third day of September in said last mentioned year.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in further pursuance of unlawful conspiracy, combination, confederation and agreement last aforesaid and to further effect the object thereof, and to wit at the District aforesaid, the said Lewis C. Van Riper, with the guidance and assistance of the matters and things and other information so as last aforesaid furnished to him by the said Edwin S. Holmes, Junior, and by the said Frederick A. Peckham, did on the thirteenth day of August, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the second day of September in the same year, and before the official issuance and publication of the cotton crop report on said last mentioned day, sell large quantities of cotton at the prices then prevailing in the open market; and that on said last mentioned day the said cotton crop report was officially issued and published, and that after the said official issuance and publication of said last mentioned cotton crop report there was a decline in the market price of cotton; and that thereupon, and after such official issuance and publication of said last mentioned report and after said decline in the market
556 price of cotton the said Lewis C. Van Riper bought large quantities of cotton corresponding in quantity with the amounts so theretofore sold by him and at prices lower than those at which he had so sold said cotton, and did thereby make large gains and profits, to wit, gains and profits to the amount of twenty-six hundred and eight dollars.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of one hundred and fifty dollars in the national currency and money of the said United States

and three checks drawn by the said Lewis C. Van Riper to the order of said Frederick A. Peckham, one of said checks being for the sum of two hundred and twenty dollars and another of said checks being for the sum of three hundred dollars, and the third of said checks being for the sum of six hundred and seventy dollars, a more particular description of which said checks for the sum of two hundred and twenty dollars and three hundred dollars the Grand Jurors aforesaid are unable to give, and the said check for the sum of six hundred and seventy dollars being of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Sept. 3rd*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to F. A. Peckham or order Six hundred seventy & no/100 Dollars.
$670 00/100.

LEWIS C. VAN RIPER."

557 And that in further pursuance of the said unlawful conspiracy, combination, confederation, and agreement last aforesaid, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did give to the said Lewis C. Van Riper a receipt of the tenor following, that is to say:

"SEP. 3 '04.

Rec'd from Mr. L. C. Van Riper $150.00 cash—and checks for $670.00, $300.00, $220.00, respectively, paying all acc'ts in full to date.

F. A. PECKHAM."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the third day of September, in the year of our Lord one thousand nine hundred and four, did endorse the said check for the sum of six hundred and seventy dollars on the back thereof, the said endorsement being of the tenor following, that is to say: "F. A. Peckham," and did deliver the said last mentioned check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and at the District aforesaid, the said Edwin S. Holmes, Junior, on the fifteenth day of September, in the year of our Lord one thousand nine hundred and four, did endorse the check last mentioned on the back thereof, the said
558 endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and on the day and at the place last

aforesaid did present the said check last mentioned to the Central National Bank of Washington City, and did receive in exchange therefor the sum of six hundred and seventy dollars in the national currency and money of the said United States.

And the Grand Jurors aforesaid, upon their oath aforesaid do further present:

That in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"Long conference Sunday between Colonel and man. S. has done something P. does not like. Is going, without S. knowing it, if possible, to put price up high as possible before 1st. Then if figures show 79 say, or better, in stead of 81.4 as before, something will drop. Belief here is you can get it going and coming. P. going to break S. later, if he can.

Destroy Sure."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid and to further effect the object thereof and at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the City of New York in the state of New York a telegram of the tenor following, that is to say:

559

"WASH'N, D. C., *Sep.* 28.

L. C. Van Riper, 108 Fulton St., N. Y'k:

Nothing new since telephoning. Will not phone at nine morning unless something developes.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of New York in the State of New York a letter of the tenor following, that is to say:

"TUESDAY, WASHINGTON, D. C., *Sept.* 28, 1904.

DEAR VAN: As stated over phone party went to B.—phoned N. Y. and evidently did not say anything *definite* as to movements—but inference was that he was going to get in and buy. When I said

over phone—party thinks—only advised what Colonel inferred—Not intended as my "thinking." Regret cannot get at it more definitely—and that program we were told about has not been so far, carried out. From talks Col. has had with man he believes
560 they will start to buy tomorrow if they did not today. Note prices have advanced a little. Remember that Mr. P. (in N. Y.) would not say over phone to Balt. Things he would if talking face to face, hence my aim on phone, and in this, to give you as good an idea as we have as to plans.

No use phoning in A. M. So wired tonight after talking with Col.—since talking to you on phone.

F."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and send by telegraph to the said Lewis C. Van Riper at the city of New York in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Sept.* 29, 1904—1 30 P. M.

L. C. Van Riper, 108 Fulton Street, New York:

Will write fully late tonight special delivery.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and at the District aforesaid, the said Frederick A. Peckham on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did write and mail to the said Lewis C. Van Riper at the city of
561 New York in the state of New York a letter of the tenor following, that is to say:

"9 P. M. Trying to get you on phone. This is since talking to you at 7.

L. C. V. R.

At 12 tonight party goes to N. Y. Before 8 a. m. tomorrow (Thursday) Price will be advised that drop will be 12 to 15 points; that is from 81.4. Also that Texas report from present data shows a drop from 75 to 49. Something remarkable. Col. padded matters, making very strong information which P. will get tomorrow—so he will be *sure* to jump right in & buy. Also party will be put in for usual ten thousand. Deterioration promises to be big—very. Reports not all in, but important ones read. All show above.

Please destroy at once. Col. says he will put up 50 points tomorrow sure—to get in early & heavy & get all back & more"

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-sixth day of September, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper two checks of the tenor following, that is to say:

"No. A 1625. HOBOKEN, N. J., *Sept. 26th*, 1904

The Second National Bank of Hoboken, Through New York Clearing House Association.

(Not Over One Hundred Dollars.)

Pay to the order of F. A. Peckham One Hundred & 00/100 Dollars $100 00/100.

LEWIS C. VAN RIPER."

562 "No. A 1626. HOBOKEN, N. J., *Sept. 26th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

(Not Over One Hundred $1008)

Pay to the order of F. A. Peckham One Hundred & 00/100 Dollars. $100 00

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1626 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham", and did deliver the said check to the said Holmes.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Holmes, on the twenty-ninth day of September, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "E. S. Holmes, Jr.," and did present the same to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlaw-
563 ful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and

to wit at the District aforesaid, the said Frederick A. Peckham on the twenty-seventh day of September, in the year of our Lord one thousand nine hundred and four, did endorse said check bearing number A 1625 on the back thereof, said endorsement being of the tenor following, that is to say, "F. A. Peckham," and did deliver the said check to the said Edwin S. Holmes, Junior.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Edwin S. Holmes, Junior, on the first day of October, in the year of our Lord one thousand nine hundred and four, did endorse said last mentioned check on the back thereof, said endorsement being of the tenor following, that is to say, "Signature of check O. K. E. S. Holmes, Jr.," and did present the said last mentioned check to the Central National Bank of Washington City, and did receive in exchange therefor the sum of one hundred dollars in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Frederick A. Peckham did on the third day of October, in the year of our Lord one thousand nine hundred and
564 four write and send by telegraph to the said Van Riper at the city of New York, in the State of New York a telegram of the tenor following, that is to say:

"WASHINGTON, D. C., *Oct.* 3, 1904.

L. C. Vanriper, 108 Fulton Street, New York.

Successful bidder best contract ever had.

FRED."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, the said Moses Haas on the twenty-fifth day of November, in the year of our Lord one thousand nine hundred and four did come to the District aforesaid and did there remain until the thirtieth day of the same month, for the purpose of learning from the said Edwin S. Holmes, Junior, matters and things and other information which were to be contained in the cotton crop report which was to be issued and published by the Department of Agriculture on or about the third day of December in the year of our Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Moses Haas, on the twenty-fifth day of November in the year last aforesaid did give to the said Lewis C. Van Riper the sum of ten thousand dollars to be used by the latter in the purchase or sale of cotton before the publication of said cotton crop report on or about said third day of December, in the year of our
565 Lord one thousand nine hundred and four.

And that in further pursuance of the said unlawful con-

spiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, on the twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between the said last mentioned and the third day of December in the year of our Lord one thousand nine hundred and four, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham and the said Moses Haas did furnish to the said Lewis C. Van Riper matters and things and other information which were to be contained in the said cotton crop report which was to be issued and published on said last mentioned day.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said Lewis C. Van Riper with the aid and guidance of said matters and things and other information so furnished to him by the said Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas as aforesaid, and to wit at the District aforesaid, did on the said twentieth day of November, in the year of our Lord one thousand nine hundred and four, and on divers other days between said last mentioned day and the third day of December, in the year of our Lord one thousand nine hundred and four sell large quantities of cotton to be delivered in the month of March next following; that upon said third day of December, in the year of our Lord one thousand nine hundred and four the cotton crop report for
536 that month was officially approved by the Secretary of Agriculture and was issued and published; that after the issuance and publication of said report the market price of cotton to be delivered in the month of March next following greatly decreased, and the said Lewis C. Van Riper thereupon and at such decreased prices brought large quantities of cotton corresponding in amount to such quantities so theretofore sold by him, and that the said Lewis C. Van Riper did thereby make large gains and profits amounting in the aggregate to a large sum, to wit, to the sum of two hundred and ten thousand two hundred and seventy-one dollars and sixty-two cents.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid, the said Moses Haas on the twelfth day of December, in the year of our Lord one thousand nine hundred and four, did receive from the said Lewis C. Van Riper the sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States, and did on the day and at the place last aforesaid receive from the said Lewis C. Van Riper a check of the tenor following, that is to say:

"No. XXX. HOBOKEN, N. J., *Dec. 12th*, 1904.

The Second National Bank of Hoboken, Through the New York Clearing House Association.

Pay to M. Haas or order Twenty four thousand two hundred fifty Dollars.

$24250. 00.

LEWIS C. VAN RIPER."

567 And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, on the day and at the place last aforesaid, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the said sum of fourteen thousand two hundred and fifty dollars in the national currency and money of the said United States so received by the said Moses Haas from the said Lewis C. Van Riper.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid and on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States and a check of the tenor following, that is to say:

"No. A 1788. HOBOKEN, N. J., *Dec. 30th*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas Twenty-five hundred twenty-five 00/100 Dollars.

$2525 00/. (Not over three thousand 3000.)

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last afore-
568 said, and to further effect the object thereof, and to wit at the District aforesaid, and on the thirty-first day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did receive from the said Lewis C. Van Riper the sum of twenty five thousand dollars in the national currency and money of the said United States, and a check of the tenor following, that is to say:

"No. A 1791. HOBOKEN, N. J., *Dec. 31st*, 1904.

The Second National Bank of Hoboken, Through New York Clearing House Association.

Pay to the order of M. Haas ($38,292.90) Thirty-eight thousand two hundred ninety-two & 90/100 Dollars.

$38,292.90.

LEWIS C. VAN RIPER."

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, and to wit at the District aforesaid and

on the thirtieth day of December, in the year of our Lord one thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of ten thousand seven hundred and sixty-seven dollars and ninety cents in the national currency and money of the said United States.

And that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement last aforesaid, and to further effect the object thereof, to wit at the District aforesaid and on the thirty-first day of December, in the year of our Lord one
569 thousand nine hundred and four, the said Moses Haas did give to the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, did receive from the said Moses Haas the sum of twenty-seven thousand and twenty-five dollars in the national currency and money of the said United States.

Against the form of the statute in such case made and provided, and against the peace and government of the said United States.

DANIEL W. BAKER,
Attorney of the United States in and for the District of Columbia.

570 (Endorsed:) No. 24907 United States, vs. Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas. Violation of Section 5440 R. S. U. S. as amended. Witnesses: Richard Cheatham, Wm. H. Moran, Wm. P. Walsh, Louis C. Van Riper, Wm. M. Judd, Victor N. Olmstead, Wm. P. McCabe, Charles V. Clark, Louis H. Mercer, B. C. White, Stephen D. Fessenden, James H. Blodgett, Harvey Jordan, James Wilson, E. W. Desgranges, Samuel R. Baul-sir. A true bill. Sam'l C. Smoot, Foreman.

571 *Authentication.*

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the said Court, do hereby certify that the *following* copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said Court.

Witness my hand and the seal of said Court, this 30th day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk.*

I, Harry M. Clabaugh, Chief Justice of said Court, do certify the foregoing attestation by John R. Young, Clerk of the said Court, to be in due form.

Witness my hand and seal this 30 day of October, 1908.

(Signed) HARRY M. CLABAUGH. [SEAL.]
Chief Justice.

I, John R. Young, Clerk of said Court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, Chief Justice of said Court, duly commissioned and qualified.

Witness my hand and the seal of said Court, this 30" day of October, 1908.

[Seal Supreme Court of the District of Columbia.]

(Signed) JOHN R. YOUNG, *Clerk*.

572 UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

Opinion of United States Commissioner Ridgway, Discharging Defendants.

573 Opinion of United States Commissioner Ridgeway, Discharging Defendants.

UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

The complaint against these defendants charged them with a violation of Section 5440 of the United States Revised Statutes, which provides as follows:

"If two or more persons conspire, either to commit an offense "against the United States, or to defraud the United States, in any "manner or for any purpose, and one or more of such parties do "any act to effect the object of the conspiracy, all the parties to such "conspiracy shall be liable to a penalty of not more than Ten "Thousand Dollars, or to imprisonment for not more than two years "or both fine and imprisonment in the discretion of the Court."

and accompanying the complaint was a certified copy of indictment, found by the Grand Jury of the District of Columbia at a Criminal Term of the Supreme Court of the District of Columbia, and a bench warrant which had been issued thereupon. Upon these papers I issued my warrant and the defendants having been arraigned before me I am asked to grant their removal to the District of Columbia, for trial, under the powers conferred by Section 1014 of the Revised Statutes, which provides:

"For any crime or offense against the United States, the offender "may, by any justice or judge of the United States, or by any U. "S. Commissioner * * * where he may be found, and agreeably "to the usual mode of process against offenders in such State * * * "be arrested and imprisoned or bailed, as the case may be, for trial "before such Court of the United States as by law has cognizance "of the offense. * * * And where any offender or witness is

" committed in any district other than that where the of-
574 " fense is to be tried, it shall be the duty of the judge of the
" District where such offender * * * is imprisoned, rea-
" sonably to issue, and of the Marshal to execute, a warrant for his
" removal to the District where the trial is to be had."

Upon the hearing, the indictment so found was offered in evidence, and the identity of the defendants was proven to my satisfaction; and upon such proof the Government rested the case, and insisted that a prima facie case had been made out.

Counsel for defense thereupon moved for the discharge of the defendants; on the ground that no offense against the United States had been made out, as would appear by an inspection of the indictment following which motion an extended argument was had.

The indictment is quite voluminous, occupying fifty-eight typewritten sheets, and is found against Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas, and consists of two counts. Briefly stated, the first count alleges that in the Department of Agriculture of the United States, on and before June 2nd, 1904, there was, and thence hitherto there has been, a bureau known as the Bureau of Statistics, under the management of an officer and employee of the United States, known as statistician and chief of the Bureau of Statistics, and other officers and employees, one of whom was known as associate statistician, and another known as assistant statistician and assistant chief of the Bureau of Statistics, who were
575 charged with the duty of preparing at certain periods, reports upon the condition of certain crops grown in the United States, and known as crop reports, stating the condition of the crops, with explanations, comparison and information useful for illustrating the matter contained in such reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; and that such crop reports were issued and published for the purpose of diffusing among the people of the United States useful information on subjects connected with agriculture. And that such statistician, and associate statistician, and other officers and employees of said Bureau were charged with the duty of honestly and carefully guarding and keeping secret, and not divulging to any person not employed in said Bureau any information acquired by *him* in the preparation of such crop reports, and in collecting and compiling statistical matter for use in such reports. That among the reports so prepared was the cotton crop report, which was issued and published about the 3d day of each month, from June to December in each year. That on November 16th, 1903, and thence continually until the 9th day of June, 1905, one Edwin S. Holmes, Junior, held and occupied the office of, and was such assistant statistician in said Bureau of Statistics in the Department of Agriculture and charged with the duty of aiding and assisting said statistician in the preparation of said crop reports, and in the absence of said statistician was charged with the duty of preparing with the
576 aid and assistance of other officers and employees of the Bureau, all of said crop reports; and that said Holmes did, be-

fore the official approval and publication of each of said crop reports, acquire and have knowledge of the statistical matter from which said crop reports were prepared, and of the information to be contained in said cotton crop reports. That it was the duty of said Holmes to honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau, any of the said statistical matter from which said cotton crop reports were to be prepared, and of the information to be contained in any of said cotton crop reports so acquired by him, until the said reports were published. That all and singular the premises aforesaid were known to said Holmes, and to Frederick A. Peckham and Moses Haas. That on June 2nd, 1904, at the District of Columbia, said Holmes, Peckham and Haas, the two latter not then being employed in or connected with said Bureau of Statistics, unlawfully did conspire, combine, confederate and agree together, to commit an offense against the United States, that is to say, the offense of misconduct on the part of him, the said Holmes, in his said scheme and arrangement, that is to say, in violation of the duty of said Holmes to honestly and carefully guard and keep secret, all statistical matter and information for said cotton reports in advance of official publication, and to prevent, obstruct and impair the due administration of affairs, and to advance the pecuniary interests of them the said Holmes, Peckham and Haas, to the prejudice of the United States, and he, the said Holmes, should
577 and would, in so far as in him the power lay, furnish the statistics and information so acquired, to said Peckham & Haas, and those procured by them, to be used by them to advance their pecuniary interests, by buying and selling cotton. That they operated through one Lewis C. Van Leiper and made great gains and profits thereby, and received therefor the various sums of $2,680; $670; $24,250; $2,525; $38,292.90; and other sums amounting in the aggregate to $210,271.62.

The second count is a repetition of the allegations contained in the first count, except that instead of alleging the commissions of the offense of misconduct, it alleges that Holmes, Peckham and Haas, "unlawfully did conspire, combine, confederate and agree together, to defraud the United States in the dishonest manner and through and by means of the dishonest scheme and arrangement following," repeating the averments as in the first count.

In the consideration of this case, I am greatly aided by the very able arguments of the District Attorney, and Mr. Morgan H. Beach, the special Assistant Attorney General, and Messrs. Marx and Miller, the counsel for defendants, in so clearly presenting the case in its various phases.

The indictment should not be declared insufficient, through any technical deficiency, and I shall not so declare it. The question here is not whether this indictment is open to criticism, but whether it states an offense sufficient in law to constitute a crime punishable by the laws of the United States.

578 However reprehensible Holmes may have been, as an officer or employee of the Government, in violating the obli-

gation of loyal trust and confidence reposed in him as such employee, by divulging the secrets of the Bureau, for the purpose of promoting his own personal advantage, these defendants were in no way connected with the Government, nor clothed with the garment of secrecy. But we are not called upon to pronounce upon which is reprehensible. The great question to be met is, whether this indictment alleges an offense against the United States which is prohibited by any law of the United States.

The power of removal has frequently been invoked and passed upon. I will therefore now refer to some of the authorities upon that branch of the case, and then pass to other authorities which have been cited by counsel.

In re Dana (68 Fed. Rep., 886), was before Judge Brown in this District in 1895, for the removal of the publisher of the Sun newspaper to the District of Columbia, on an indictment for libel. The Commissioner held him for removal, but Judge Brown discharged him. It was there held: On an application for removal under Sec. 1014, the defendant has the right to an examination, when demanded, and to show want of probable cause; and the evidence offered should be received.

In that case, Judge Brown says:

"The commitment was made and removal is asked, upon no "evidence of crimination, or of probable cause, except a copy of the "indictment found in the District of Columbia. Its reception as evi- "dence of criminality was objected to. The objection was over- "ruled, and the finding of the indictment was treated as so far
"conclusive on the question of probable cause, as to leave
579 "nothing for the Commissioner, as a committing magistrate,
"to determine, except the identity of the defendant. Evi- "dence offered by the defendant to disprove probable cause was ac- "cordingly rejected. On the question of criminality, no witness "was called for the prosecution, and none was allowed for the de- "fendant. It is claimed by the prosecution, that the long practice "of this district warrants that course." * * * "I am equally "satisfied that libel, in the District of Columbia, does not belong to "the class of offenses contemplated, or provided for by the 33d "section of the Judiciary act, or by Section 1014 of the Revised "Statutes which re-enacted it.

Judge Brown says further:

"Judge Lowell in Re Alexander (1871) under section 1014, "uses this language: 'Such an indictment is only a piece of evi- "'dence, which may be met and controlled; but where it stands by "'itself, and is uncontradicted, it is enough to authorize the war- "'rant.'"

Judge Brown also cites the case of U. S. v. Fowkes, 49 Fed. Rep., 50, and the same case on appeal, 53 Fed. Rep., 13, and 3 C. C. A., 294, as authority for the indictment as evidence, but not conclusive; and that the same rule was applied in U. S. v. Rogers, 23 Fed. Rep., 658—where Judge Parker says, that on application for removal, the Judge "may go behind the indictment to ascertain where the trial is to be had."

And then Judge Brown adds:

"The fourth amendment of the Constitution provides that, 'no "' warrant shall issue but upon probable cause, supported by oath or "' affirmation. The proceeding contemplated by section 1014 is, "' moreover, an original and independent proceeding. It makes "' no reference to any indictment found elsewhere.'"

In re Richtern 100 Fed. Rep., 295 (Wisconsin, 1900), it was held:

"On an application for a warrant for the removal of a defendant "to another district, for trial on a criminal charge, the Court is not "restricted to questions of jurisdiction, but may inquire generally
"into the grounds of the charge, to ascertain the existence
580 "of probable cause. In such a case, an indictment is pre-
"sumptive evidence of probable cause, if an offence within "the statute is clearly stated therein, but it is not conclusive, and, "if doubt is raised in any material aspect of the charge, must be "supported by proof aliunde.'"

In re Wolf and another (27 Fed. Rep., 606), Parker, J., Arkansas, 1886, it was held:

"1. A judge of the United States Court, when acting on an ap- "plication for a warrant of removal of a person charged with a "crime, from one district to another for trial, is to exercise sound "judicial discretion. He must look to the question of the jurisdic- "tion of the Court sitting where he is asked to remove the prisoner "to try the case. To determine where the trial is to be had, he may "look into the whole case to see that the Court where the party is to "be removed has jurisdiction over the place, the person, and the sub- "ject matter."

"2. There may be a want of subject matter, either because there "is no law making the act charged a crime, or because the act is "not properly charged, or that the party charged has not done the "act."

"7. Conspiracy, as defined by section 5440 Rev. Stat. means an "unlawful agreement to do an act which by some law of the United "States has been made a crime."

In U. S. v. Rogers, (23 Fed. Rep., 658), in 1885, Judge Parker had previously held:

"In an application for removal under Section 1014, the judge "may go behind the indictment, as jurisdiction to try embraces "jurisdiction of the person, of the place and the subject matter. "There must be a concurrence of all of these to give the right to "try."

In re Corning (51 Fed. Rep., 205), before Ricks, District Judge, Ohio, 1892, it was held:

"On an application to a federal court for the removal of a resident "of the district to a distant State and District for trial, it is the duty "of the Court to scrutinize the indictment, disregarding technical "defects, but to refuse the warrant if the crime alleged is not triable "in the district to which a removal is sought, or if the indictment "fails to charge any offense under the law."

And Judge Rick- here cites a case, saying, that in
581 such a case, and for such a failure, the Judge "would misconceive his duty and fail to protect the liberty of the citizen."

In re Benson, J., in 130 Fed. Rep., 486, before Lacombe, J., in May, 1904, it was held: "The indictment is prima facie evidence of the commission of the offense." In that proceeding no evidence was introduced by defendant controverting any of the averments of the indictment. The Government, however, called several witnesses, and undertook to prove the offense, independent of the indictment.

In re Benson, (131 Fed. Rep., 968), came before Judge Lacombe in July, 1904, where he discharged the defendant. It was there held:

"Technical or formal objections to the sufficiency of an indict-
"ment will not be considered in a proceeding for removal of a
"federal prisoner, to the district in which he is triable, but will be
"left for determination by the C Court in which it was found; but,
"if on a broad and liberal construction, the indictment does not
"appear to charge an offense, the prisoner should not be held for
"removal."

In U. S. v. Lee (84 Fed. Rep., 626) before the District Court, California, in 1898, for removal, under Sec. 1014, the only ground for removal was the indictment; and it appeared from an inspection of the indictment that the Court had no jurisdiction of the alleged offense; and the defendant was discharged.

In re Beshears (79 Fed. Rep., 70), was before Woolson, District Judge, Iowa, in 1897, on an application for removal under Section 1014, in which he says:

"In the case of In re Terrell, 51 Fed. Rep., 213-214, Circuit
"Judge Lacombe on the hearing upon habeas corpus, after
582 "citing various cases, uses these words: 'This is a country of
"'vast extent, and it would be a grave abuse of the rights
"'of the citizen, if when charged with alleged offenses, committed,
"'perhaps, in some place he had never visited, he were removed to
"'a district thousands of miles from his home, to answer to an in-
"'dictment fatally defective.'"

Agnew v. United States (165 U. S. R., 36), was before the Supreme Court of the United States in 1897, and the opinion of the Court was delivered by Chief Justice Fuller, where he says:

"In criminal cases the burden of establishing guilt rests on the
"prosecution, from the beginning to the end of the trial. But when
"a prima facie case has been made out, as conviction follows unless
"it is rebutted, the necessity of adducing evidence then devolves on
"the accused."

The recent case of Beaver v. Henkel (194 U. S. R., 73-78), for a warrant for removal, under Sec. 1014, was decided by the Supreme Court of the United States in April, 1904, where it was held:

"Statutory provisions must be interpreted in the light of all that
"may be done under them. In all controversies, civil or criminal,
"between the Government and an individual, the latter is entitled
"to reasonable protection."

The Fifth Amendment is satisfied by one inquiry and adjudication.

"Within the spirit of the rule of giving full effect to the records "and judicial proceedings of other Courts, accepted everywhere "through the United States as at least prima facie evidence of the "existence of probable cause. And the place where such inquiry "must be had, and the decision of the grand jury obtained, is the "locality in which by the Constitution and laws of the final trial "must be had. * * * It is competent to show in habeas corpus "proceedings by parol evidence, that the accused was not within the "demanding State when the alleged acts were committed, however "regular the extradition papers may be" citing in re Mohr, 73 Ala-"bama, 508."

The opinion of the Court in the last mentioned case of Beavers v. Henkel, was by Mr. Justice Brewer, and in it he uses this
583 language:

"It may be conceded that no such removal should be sum-"marily and arbitrarily made. There are risks and burdens at-"tending it which ought not to be needlessly cast upon any in-"dividual." * * * "While the indictment is prima facie evi-"dence it is urged that there are substantial reasons why it should not "be regarded as conclusive. An investigation before the grand jury, "it is said, is generally ex parte—although sometimes witnesses in "behalf of the defendant are heard by it—and the conclusion of "such ex parte inquiry ought not to preclude the defendant from "every defense, even the one that he was never within the State or "district in which the crime is charged to have been committed, or "authorize the government to summarily arrest him whenever he "may be found, transport him perhaps far away from his home, "and subject him among strangers to the difficulties and expense of "making his defense."

In U. S. v. Greene et al. (100 Fed. Rep. 941), before Brown, District Judge, Southern District of New York, 1900, it was held:

"While an indictment is admissible in evidence before a Com-"missioner, in a proceeding for removal of the defendant to another "district for trial upon the question of probable cause, it is not "conclusive, but it is entitled to weight only as an affidavit tending "to establish the facts and circumstances therein alleged."

"The proceeding or commitment under section 1014 is an original "proceeding, to be conducted according to the laws of the State in "similar proceedings before committing magistrates; that the ob-"ject of the proceeding is to enable the Commissioner to ascertain "for himself whether from the proof of the facts and circumstances "produced before him, there is probable cause to believe the de-"fendants guilty of the offense charged; that the mode of proceed-"ing in such cases is precisely the same whether there is an indict-"ment or no indictment."

"In New York, the right of the accused to produce witnesses in "his own behalf before committing magistrates was confirmed by "express statute more than 70 years ago, and more than 10 years "before the enactment of section 1014 of the United States Revised "Statutes; and such is the uniform course of procedure."

The application for removal in that case was denied.

584 U. S. v. Greene et al. (108 Fed. Rep., 816), also came before Judge Brown one year later—in which he said:

"Where the Commissioner, on the hearing in proceedings for the "removal of persons charged with crime, to another district for trial, "had before him any competent legal evidence upon which to exer- "cise his judgment as to whether there was probable cause to believe "the accused guilty, his finding upon that question cannot be re- "viewed by the Court, on an application for an order of removal."

In re Wood (95 Fed. Rep., 288), was before Bellinger, District Judge, Oregon, in 1899, where he held:

"The action of a Commissioner in discharging a person in pro- "ceedings under section 1014 for his removal to another district for "trial on a criminal charge, after a full hearing, should be con- "clusive on the government, especially where the testimony offered "is that upon which the indictment was found."

"The indictment is evidence, but it is not conclusive."

"This law *is* a law in restraint of liberty, and is to be strictly con- "strued and strictly pursued."

In the case of U. S. v. Horner, (143 U. S. R., 207), before the U. S. Supreme Court, in 1892, the opinion of the Court being by Mr. Justice Blatchford, where it was held: That in a hearing for removal, under Section 1014, the Commissioner has full jurisdiction to decide all questions of fact, for the purpose of the removal of the accused and his decision will not be reviewed.

In re Belknap (96 Fed. Rep., 614), cited by the Government, was for removal under Sec. 1014, and the Court there held that the Court in Texas had no jurisdiction of the offense charged, and it would be unjust, as well as useless, to send the defendants there for trial. They were therefore discharged.

585 Benson v. Henkel (198 U. S. R., 1), before the Supreme Court of the United States in April of the present year, Justice Brown delivering the opinion of the Court, in which he says:

"The extent to which a Commissioner in extradition may in- "quire into the validity of an indictment put in evidence before "him, as proof of probable cause of guilt, has never been definitely "settled, although we have had frequently occasion to hold gen- "erally that technical objections should not be considered." * * * "If the indictment were a mere information or obviously upon in- "spection, set forth no crime against the United States or a wholly "different crime from that alleged as the basis for the proceedings, "or if such crime be charged to have been committed in another "district from that to which the extradition is sought the Commis- "sioner could not properly consider it as a ground for removal. In "such cases resort must be had to other evidence of probable cause." * * *

"The anomaly in Rev. Stat. Sec. 1014, as applied to this district, "consists in its limitations to offenses against the United States, since "the Courts of the District of Columbia have a local as well as a "federal jurisdiction and may punish for offenses, which if com- "mitted within the limits of any other district of the United States, "would be relegated to State Courts." * * *

"Certain cases are to be found, which hold that persons accused "of crimes committed within the District of Columbia, against its "local laws, cannot be removed to this district for trial under Sec- "tion 1014." * * *

"The question, however, does not arise in this case, since the in- "dictment charges an offense against the United States in violation "of Section 5451, respecting the bribery of public officers."

In the case of Benson v. Henkel, Mr. Justice White, Mr. Justice Peckham and Mr. Justice McKenna, say, they

"agree in the conclusion just announced, and in the main with "the reasoning of the opinion. But we are unable to concur "in the view that where the Commissioner may be of the opinion "that the indictment charges no offense against the laws of the "United States, and there is no other proof of probable cause before "him, the order of arrest may be made remitting to the Court where "the indictment was found all questions of the sufficiency of the "indictment. * * * The order of removal involves judicial "rather than ministerial action." * * * Whether found in the "indictment, or as a result of their testimony, the order to remove "the accused can only be issued upon a showing of probable cause. "(Greene vs. Henkel, 183 U. S.)" * * * "The argu-
586 "ment chiefly relied upon against the right to issue the order "of arrest and subsequently of removal, rested upon the al- "leged insufficiency of the indictment to charge any offense within "the terms of the statute." * * * "In our opinion the Com- "missioner, where the case is thus presented, must pass upon the "sufficiency of the indictment. It is his duty to decide whether an "offense is charged with a view to making or withholding the order "of arrest, which when made, becomes the basis of an order of re- "moval of a citizen to the place of trial which may be many mile- "distant from his home. Such order is proper only in cases wherein "probable cause has been shown to believe the accused guilty of an "offense cognizable by the laws of the United States in the proceeding "pending against him, and for which he is to answer at the place of "indictment."

In the matter of Charles A. Dana, (7 Benedict's D. C. R., 1) July, 1873, Dana, publisher of the Sun newspaper was indicted for crim- inal libel in the District of Columbia, and application was made under the 33d section of the Act of Congress of Sept. 24, 1789 (now Sec. 1014 of the U. S. Rev. Stat.), for his removal to the District of Columbia, for trial, as for a "crime or offense against the United States," in which case the Commissioner held him for removal, but Judge Blatchford discharged him.

The great case of U. S. v. Aaron Burr (Federal Case No. 14,692), before the Court in 1807, Chief Justice Marshall held that:

"On a preliminary examination, probable cause must be shown. "Proof furnishing good reason to believe that the crime alleged has "been committed by the person charged."

Northern Securities Co. vs. U. S. (193 U. S. R., 197), was before the Supreme Court of the United States last year, and it was there held:

587 "Cases should not be brought within a statute containing "criminal provisions that are not clearly embraced by it."

U. S. v. Curley (122 Fed. Rep., 738), April, 1903, before the Circuit Court in Massachusetts, was a case of conspiracy for fraud on the Federal Government, by forging civil service papers in violation of Section 5418 of the U. S. Rev. Stat., and there

"Held, that a conspiracy by which one falsely impersonated an- "other at a civil service examination, and makes a declaration sheet "for the latter, is within the statute; pecuniary fraud not being alone "intended."

U. S. vs. Bunting (82 Fed. Rep., 883) Sept. 1897, was for exactly the same offense.

The case of U. S. v. Benson (70 Fed. Rep., 591), California, 1895, was in some respects like the present case, in that the indictment charged, under Section 5440, 1st, a conspiracy to commit an offense against the United States; and 2nd, a conspiracy to defraud the United States in any manner and for any purpose. In that case, Judge Hawley says:

"The national courts cannot resport to the common law as a source "of criminal jurisdiction. Crimes and offenses cognizable under the "authority of the United States can only be such as are expressly "designated by law. It devolves upon Congress to define what are "crimes, to fix their punishment and to confer jurisdiction for their "trial. U. S. v. Walsh, 5 Dill, 60; Fed. Case No. 16, 636; U. S. v. "Martin, 4 Cliff, 156; Fed. Case 60, 15, 728; In re Greene, 52 Fed. "Rep., 104; U. S. vs. Hudson, 7 Cranch, 32; U. S. vs. Coolidge, 1 "Wheaton, 415; U. S. vs. Britton, 108 U. S., 199."

588 France vs. U. S. (164 U. S. R., 676), Jany., 1897, was a case in relation to Lotteries, and the indictment was for conspiracy under Sec. 5440, for violation — the Act of Congress of March 2, 1895. Mr. Justice Peckham, delivering the opinion of the Court, says:

"The statute does not cover the transaction, and however repre- "hensible the acts of the plaintiffs in error may be thought to be, we "cannot sustain a conviction on the ground. * * * The statute "being highly penal rendering its violation liable to fine and im- "prisonment we are compelled to construe it strictly."

U. S. v. Milner (36 Fed. Rep., 890), Alabama, 1888. The indictment was under Section 5440 and charged a conspiracy with intent to defraud the United States.

"4. An allegation that defendants entered into an agreement "which was corrupt, and with a bad intent, does not sufficiently de- "scribe the act done to effect the object of the conspiracy."

And Judge Pardee says:

"The case was in reference to the discontinuance of certain suits "which might be brought by the United States against certain parties "to recover certain lands alleged to have been fraudulently and un- "lawfully obtained from the United States," and he added, "It is "difficult to see how the United States could be defrauded in any "manner or for any purpose."

U. S. vs. Greene & Gaynor (115 Fed. Rep., 343), Georgia, Feby.,

1902, before Speer, District Judge. This was a case under section 5440, for conspiring to defraud the United States by obtaining the allowance and payments of fraudulent claims, where the work done at Cumberland Sound, in the Savannah district under the supervision of Capt. Oberlin M. Carter of the Engineer Corps, U. S. Army—

Greene and Gaynor not being connected with the Government.

589 U. S. v. Eaton, (144 U. S. R., 677), April, 1892, was the oleomargerine case, where it was held:

"There are no common law offenses against the United States."

"It is necessary that a sufficient statutory authority should exist "for declaring any act or commission a criminal offense."

Mr. Justice Blatchford, in delivering the opinion of the Court in that case, says:

"It is well settled, that there are no common law offenses against "the United States. U. S. v. Hudson, 7 Cranch, 32; U. S. v. Coolidge, 1 Wheaton, 415; U. S. v. Britton, 108 U. S., 206; Manchester v. Massachusetts, 139 U. S., 240, 262, 263 and cases there cited."

"It was said by this Court in Morrill v. Jones, 106 U. S., 466, 467, "that the Secretary of the Treasury cannot by his regulations alter "or amend a revenue law, and that all he can do is to regulate the "mode of proceeding to carry into effect what Congress has enacted." "* * * Much more does this principle apply to a case where it "is sought substantially to prescribe a criminal offense by the regu"lation of a department. It is a principle of criminal law that an "offense which may be the subject of criminal procedure is an act "committed or omitted 'in violation of a public law, either forbid"'ding or commanding it. 1 Am. and Eng. Ency., of L., 642; 4 "'Black, Com., 5.'"

"It would be a very dangerous principle to hold that a thing pre"scribed by the Commissioner of Internal Revenue as a needful regu"lation under the oleomargarine act, for carrying it into effect can "be considered as a thing 'required by law.'" * * * "It is "necessary that a sufficient statutory authority should exist for de"claring any act or omission a criminal offense."

U. S. v. Britton (108 U. S. R., 199), April, 1883, was a case under the National Banking Laws. Mr. Justice Woods, delivering the opinion of the Court, says:

"There are no common law offenses against the United States. "U. S. v. Hudson, 7 Cranch, 32; U. S. v. Coolidge, 1 Wheaton, 415 "and section 5204, of the Rev. Stat. for violation of which the de"fendants were indicted as directors of a national bank) does not of "itself create any offense against the United States."

590 U. S. v. Schuman (7 Sawyer, R., 436), California, 1866.

This matter was before Mr. Justice Field, and Hoffman, District Judge, as to the powers and duties of U. S. Commissioners in criminal cases, in which they held:

"For the faithful discharge of his duty in these particulars he "alone is accountable. He has no divided responsibility with any "other officer of the government; nor is he subject to any other's "control."

It would seem that the allegation of the indictment, that it was

Holmes' lawful duty to keep the data of the expected cotton crop reports secret, is negatived by the statute; and the Supreme Court of the United States has held (and it is controling upon us), that the statute as to one's official duty, is controlling over the allegations of the indictment. (U. S. v. Smith, 124 U. S. R., 535). That case was argued before the Supreme Court of the United States in 1888 in behalf of the defendant by Mr. Root, our present Secretary of State, and he prevailed.

The jurisdiction of the United States Courts is pointed out by the Constitution, and depends exclusively on the constitution. They cannot exercise common law jurisdiction in criminal cases; nor proceed by information in criminal cases, unless the power is granted by Congress.

I Desty's Fed. Proc., Sec. 1, and citing Ex parte Bollman, 4 Cranch, 75; 1 Gall, 488; Fed. Cases, No. 10,422; U. S. v. Beavers, 3 Wheaton, 336; Fed. Cas.,16, 122, and others.

The Constitution and amendments provide:

591 Art. 111, Sec. 2 of the Constitution provides:

"The judicial power shall extend to all cases in Law and "Equity, arising under this constitution, the laws of the United "States, &c."

"The Judicial power covers every legislative act of Congress."

"No person shall be * * * deprived of life, liberty, or prop- "erty without due process of law."

That the President shall have "power" * * * "to appoint" * * * "Judges of the Supreme Court and all other officers of the "United States, whose appointments are not herein otherwise pro- "vided for, and which shall be established by law; but the Congress "may by law vest the appointment of such inferior officers, as they "think proper in the President alone, in the Courts of Law, or in the "Heads of Departments."

I have thus given all the authorities which I deem to be necessarily applicable in this case.

It is conceded by the Government that there is no statute of the United States creating the offense of official misconduct, and that there are no common law offenses against the United States; but that while this is, undoubtedly, the general rule, it does not apply in the District of Columbia, by reason of the fact that the District of Columbia upon its cession partook of the common law of its parent, the State of Maryland, which State had adopted the common law and also a considerable part of the statute law of England; and that the common law of England, in all its branches both civil and criminal, remains to-day the law of the District of Columbia. And although not an offense when committed by a Federal officer in any of the States of the Union, nor in any territory or any other ceded district under the exclusive jurisdiction of the United States that it is

592 an offense against the United States in the District of Columbia. In support of that proposition several decision- of the Supreme Court of the District of Columbia were cited; among them was the Tyner case; so strenuously relied upon by the Government. But the Tyner case has no application to the case at bar; for in the

Tyner case, there was an affirmative fraudulent act—the juggling with and substitution of false reports, and not a mere disclosure of the contents of a true report.

And the following propositions of law are here presented in behalf of the Government.

I.

Section 5440 is aimed at conspiracies which are intended either to (1) Defraud the United States in any manner or for any purpose, or to Commit an offense against the United States.

II.

The words "To defraud the United States in any manner or for any purpose," mean more than to deprive the United States of money of *of* material value; they extend to any willful or corrupt
593 misconduct of a public servant, in violation of his lawful duty, which operates to impair the administration of the public service.

III.

The offense of misconduct in office is an offense against the United States in the District of Columbia, independently of a statute defining the crime.

Carried to its logical result, would it not follow that for anything wrongfully done by any employee of the government, whether in the highest or the lowest position; or for some trivial act of misconduct, by him committed in the District of Columbia; or should any such employee agree with some other persons to do anything, or omit to do anything, however unimportant, which might be considered to be inconsistent with the duties of the position held by him, must be adjudged to be guilty of an offense against the United States, and to have thereby defrauded the United States, and so rendered himself liable to be apprehended in San Francisco, or Alaska, or some other distant part of our vast country, and brought in custody to the District of Columbia, to be tried for such offense—although the offense of misconduct is nowhere mentioned in any Act of Congress?

I cannot agree that any greater power exists in the District of Columbia than in the States of the Union.

594 After a careful examination of the authorities and the fullest consideration of this case, I find that the facts alleged against these defendants, do not constitute a crime under Section 5440. Nothing set out in the indictment sets forth any offense which is made an offense by law; and the only conclusion I can come to is that these defendants are entitled to be discharged. They must therefore be discharged.

595 United States District Court, Southern District of New York.

THE UNITED STATES
v.
MOSES HAAS.

Removal Complaint Under Section 5440, R. S. U. S. as Amended.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

First Count.

Henry L. Burnett, being duly sworn, says that he is United States Attorney for the Southern District of New York.

On information and belief he further says that heretofore, and on or about the 2nd day of June, A. D. 1904, and thence forth hitherto, there has been and now is a bureau designated and known as the Bureau of Statistics in the Department of Agriculture of the United States with its headquarters at the City of Washington in the District of Columbia and that at the time first aforesaid, and thence forth until the 9th day of June A. D. 1905, in the district aforesaid, one Edwin S. Holmes, Junior, was an officer of the United States and a person acting for and on behalf of the United States in an official function under and by authority of a department of the government thereof, that is to say, as an associate statistician in said Bureau, and during the period last aforesaid, there did act and perform the duties of such associate statistician, and that by reason of being such officer and person acting as aforesaid under the law and
596 the regulations theretofore and then, pursuant to law, prescribed and promulgated by the Secretary of Agriculture of the United States for the government of his department, and the conduct of its officers and clerks, and in force at the time last aforesaid; he, the said Edwin S. Holmes, Junior, was charged, among other things, with the duties and responsibilities set forth in an indictment, a certified copy whereof is hereto annexed marked Exhibit A and made a part of this complaint, as if fully herein set forth, and more particularly reference is herein made to the first count in said indictment.

And that on said 2nd day of June, A. D. 1904, and at the District of Columbia, aforesaid, the said Edwin S. Holmes, Junior, and one Frederick A. Peckham, and one Moses Haas, all late of the District of Columbia, the said Frederick A. Peckham and said Moses Haas not being then and there employed in or connected with said Bureau of Statistics, unlawfully, did conspire, combine, confederate and agree together, to commit an offense against the United States, that is to say, the offense of misconduct on the part of him, the said Edwin S. Holmes, Junior, in his said office of associate statistician in the said Department of Agriculture, to be done and committed by him, the said Edwin S. Holmes, Jr., in a dishonest manner and through and by means of the dishonest scheme and arrangement set forth in the first count in said Exhibit A hereto annexed, each

and all of the averments of which are prayed to be considered as if fully herein set forth. That thereafter in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Frederick A. Peckham at the District of Columbia on the 6th day of August in the
597 year of our Lord, 1904, did write and send by telegraph to one Louis C. Vanriper at the City of New York and State of New York, a telegram of the tenor following, that is to say:

"16 WASHINGTON, D. C., *August* 6, 1904.

L. C. Vanriper, Room 1001, No. 20 Broad St., N. Y.:

Come to Washington at once. Wire me Raleigh Hotel time of arrival, don't advise Mrs. P.

FRED. 1.10 P. M."

and that in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof at the district aforesaid, the said parties to said unlawful combination, conspiracy, and confederation did commit certain other overt acts as set forth and averred in said Exhibit A hereto annexed and made part of this complaint.

Second Count.

Deponent further says, reiterating the statements set forth in the first count of this complaint, and to which reference is here made for greater certainty, that on the 2nd day of June, A. D. 1904 in the said District of Columbia, said Edwin S. Holmes Junior, and the said Frederick A. Peckham and the said Moses Haas, the said Frederick A. Peckham and the said Moses Haas not being then and there employed in or connected with the aforesaid Bureau of Statistics, unlawfully did conspire, combine, confederate and agree together to defraud the United States in a dishonest manner and through and by means of the dishonest scheme and arrangement set forth in the second count of Exhibit A hereto annexed,
598 each and all of the averments of which are prayed to be considered as if fully set forth herein. And that in pursuance of the said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Frederick A. Peckham, on the 3rd day of August A. D. 1904, in the District of Columbia, did procure one Louis C. Vanriper, who was then and there a person possessed of money and who was then and there employed in or connected with the said Bureau of Statistics to buy and sell cotton in the manner described in the said second count of said Exhibit A hereto annexed and made part of this complaint as if the same had been fully set forth herein; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

And that thereafter and at the April Term of the Grand Jury of the Supreme Court of the District of Columbia, an indictment

was found charging the said Edwin S. Holmes, Junior, and Frederick A. Peckham and Moses Haas among other things, with the offenses hereinbefore set forth, which said indictment was filed in open court in the Supreme Court of the District of Columbia on the 2nd day of October, A. D. 1905, and numbered 24907, and that Exhibit A hereinbefore referred to and hereto attached is a duly certified and exemplified copy thereof; and that thereafter on the 3rd day of January A. D. 1905, a bench warrant was issued out of the said Supreme Court of the District of Columbia for the arrest of the said Moses Haas, which said bench warrant is hereto annexed and marked Exhibit B.

That deponent is informed and believes that the said Moses Haas is now within the Southern District of New York.

599 That the sources of deponent's information and grounds of his belief upon which he makes the foregoing allegations, are the certified copy of the indictment hereinbefore referred to, and hereto annexed and marked Exhibit A and said bench warrant heretofore referred to and hereto annexed and marked Exhibit B.

(Signed) HENRY L. BURNETT.

Subscribed and sworn to before me this 5th day of January A. D. 1906.

(Signed) JOHN A. SHIELDS,
U. S. Commissioner.

(Ex. A is an authenticated copy of indictment No. 24,907. A copy of this indictment on page 511 of the record herein.)

600 In the Supreme Court of the District of Columbia, Holding a Criminal Term.

EXHIBIT B.

Criminal. No. 24907.

THE UNITED STATES
vs.
MOSES HAAS.

Indicted for Violation Section 5440, R. S. U. S.

The President of the United States to the United States Marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant Moses Haas if to be found in your district, and him have before the Criminal Court for the said District of Columbia (immediately) to answer the United States touching the offense charged against him.

Hereof fail not, and have there then this writ, so endorsed as to show how you have executed it.

Witness the Honorable Harry M. Clabaugh Chief Justice of said Court, the 3rd day of January A. D., 1906.

[Seal Supreme Court of the District of Columbia.]

(Sgd.) J. R. YOUNG, *Clerk*.
By F. W. SMITH, *Ass't Clerk*.

601 (Endorsements:) U. S. District Court Southern District of New York. United States v. Moses Haas. Warrant of Arrest. I hereby depute Doonan to execute the within Writ. Dated, January 5, 1906. Wm. Henkel, U. S. Marshal. Bail fixed in the sum of $1500, and examination to be had April 24, 1906 at 2 P. M. before Judge Holt. Dated April 10, 1906. Geo. B. Adams, U. S. D. J. Defendant Moses Haas discharged on bail to await examination before Judge Holt. Ap'l 10, 1906. John A. Shields, Com. Received this warrant on the 5th day of January 1906 at New York City and executed the same by arresting the within named Moses Haas at New York City on the 10th day of April 1906, and have his body now in court, as within I am commanded. Wm. Henkel, U. S. Marshal.

602 The President of the United States of America to the Marshal of the United States for the Southern District of New York and to his Deputies or any or either of them:

Whereas, complaint in writing under oath has been made before me, a copy of which is hereto attached; the said complaint charging in the first count thereof that one Edwin S. Holmes, Junior, at the District of Columbia, on the 2d day of June A. D. 1904, and thenceforth until the 9th day of June, A. D. 1905, was an officer of the said United States and a person acting for and on behalf of the said United States in an official function under and by authority of a department of the government thereof, that is to say, was associate statistician in the Bureau of Statistics in the Department of Agriculture of the said United States, and that by reason of being such officer the said Edwin S. Holmes, Junior, was charged, among other things, with the duties and responsibilities set forth in a certain indictment, a certified copy whereof is attached to and made part of said complaint; and charging further, that on said 2d day of June, A. D. 1904, and at the District of Columbia aforesaid, the said Holmes and one Frederick A. Peckham, and one Moses Haas, the said Peckham and the said Haas not being then and there employed in or connected with said Bureau of Statistics, unlawfully did conspire, combine, confederate and agree together to commit an offense against the United States, that is to say, the offense of misconduct on the part of said Holmes in his said office of associate statistician in the said Department of Agriculture, to be done and committed by him, said Holmes, in the dishonest manner and through and
603 by means of the dishonest scheme and arrangement set forth in the first count of said complaint and of said indictment; that in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said

Peckham, at the said District of Columbia, on the 6th day of August, A. D. 1904, did write and send by telegraph to one Louis C. Vanriper at the City of New York in the State of New York, a telegram of the tenor following, that is to say:

"16. WASHINGTON, D. C., *August* 6, 1904.

L. C. Vanriper, Room 1001, No. 20 Broad St., N. Y.:

Come to Washington at once. Wire me Raleigh Hotel time of arrival, don't advise Mrs. P.

FRED. 1.10 P. M."

and that in further pursuance of said unlawful conspiracy, combination, confederation and agreement, and to further effect the object thereof at the District of Columbia aforesaid, the said parties thereto did commit certain other covert acts as are set forth in and more fully appear by the copy of said complaint and of said indictment hereto attached, and against the peace and government of the said United States and against the form of the statute in such case made and provided.

And the said complaint charging in the second count thereof that on the said 2d day of June, A. D. 1904, and at the District of Columbia aforesaid, the said Edwin S. Holmes, Junior, and the said Frederick A. Peckham, and the said Moses Haas, the said Peckham and the said Haas not being then and there employed in or connected with said Bureau of Statistics, unlawfully did conspire, combine, confederate and agree together to defraud the said United
604 States in the dishonest manner and through and by means of the dishonest scheme and arrangement set forth in the second count of said indictment so attached to said complaint. And that in pursuance of said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object thereof, the said Peckham on the 3rd day of August, A. D. 1904, in said District of Columbia, did procure one Louis C. Vanriper, who was possessed of money and was not then and there employed in or connected with said Bureau of Statistics, to buy and sell cotton in the manner described in said second count of said indictment as by said copy of said complaint and of said indictment will more fully appear; and against the peace and government of the said United States and against the form of the statute in such case made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Moses Haas wherever he may be found, and bring his body forthwith before me, that he may then and there be dealt with for said offenses, according to law.

Dated January 5th, 1906.

(Sgd.) GEO. C. HOLT,
U. S. Judge.

605 EXHIBIT 10.

In the District Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
MOSES HAAS, Defendant.

Findings of Fact, Conclusions of Law, and Order Discharging Defendant.

Rockwood & Salisbury, Attorneys for Defendant, 378 Broadway, Saratoga Springs, N. Y.

606 Findings of Fact, Conclusions of Law, and Order Discharging Defendant.

In the District Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
MOSES HAAS, Defendant.

Whereas, heretofore and at the April 1905 term of the Grand Jury of the Supreme Court of the District of Columbia an alleged indictment was found charging Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas, above named, with having committed the crime of conspiracy under Section 5440 of the Revised Statutes of the United States of America, which said indictment was thereafter filed in open court in the Supreme Court of the District of Columbia on or about the 2nd day of October, 1905, and numbered 24,907; And

Whereas, thereafter and on the 9th day of October, 1905, a bench warrant was issued out of the said Supreme Court of the District of Columbia for the arrest of the said Moses Haas; And

607 Whereas, thereafter and on or about the 13th day of October, 1905, upon the complaint of Clarence S. Houghton, Esq., an assistant United States Attorney for the Southern District of New York, the said Moses Haas was arrested and arraigned before James Ridgway, Esq., a duly authorized United States Commissioner in and for the Southern District of New York, charged with having committed the crime set forth in said indictment; and

Whereas, such proceedings were had before said United States Commissioner Ridgway that both the United States of America and said defendant Moses Haas were heard upon the merits of said application for the removal of said Moses Haas to the District of Columbia for trial upon said alleged indictment, both the Government and said defendant Moses Haas being represented by counsel; And

Whereas, in such proceedings so instituted before said United States Commissioner Ridgway, such proceedings were thereafter had that after said full and complete hearing said Moses Haas was thereafter and on or about the 28th day of October, 1905, discharged by said United States Commissioner Ridgway upon the ground, in substance, that the facts alleged in said indictments do not constitute a crime under Section 5440 of the Revised Statutes of the United States of America, and said defendant Moses Haas was thereupon duly discharged and released by the order of said United States Commissioner made in open Court. And

608 Whereas, thereafter and on or about the 5th day of January, 1906, complaint was made before the undersigned, Honorable George C. Holt, United States Judge for the Southern District of New York, charging said defendant, Moses Haas, with having committed the said crime of conspiracy against the United States of America under Section 5440 of the Revised Statutes thereof, which complaint was based upon the same indictment upon which was founded the complaint, warrant and proceedings before said United States Commissioner Ridgway, aforesaid. And

Whereas, upon said complaint so made, a warrant for the apprehension of said defendant, Moses Haas, was duly made and issued by said Honorable George C. Holt, United States Judge for the Southern District of New York, and said defendant, Moses Haas, was thereafter arrested by the Marshal for the Southern District of New York and arraigned before said Honorable George C. Holt, United States Judge and admitted to bail pending the further hearing and determination of said matter. And

Whereas, thereafter and on the 25 & 26 days of April, 1906, a hearing upon said matter was duly had before said United States Judge at which time evidence was offered in support of said application by the Government and said case was duly considered upon the merits by the undersigned, the appearances being Honorable Henry L. Stimson, United States Attorney for the Southern District

609 of New York, and Honorable Morgan H. Beach, Special Assistant to the Attorney General of the United States, of counsel for the United States of America; and Thomas E. Rush, Esq., Charles W. Ridgway, Esq., and Nash Rockwood of the firm of Rockwood & Salisbury (attorneys for the defendant), of counsel for the defendant Moses Haas. And

Whereas, upon such application and argument, application was made to the undersigned by the Government, under Section 1014 of the Revised Statutes of the United States, for the commitment and removal, to the District of Columbia for trial, of the said defendant, Moses Haas, upon the charge made against him by virtue of the indictment hereinbefore referred to. And

Whereas, upon the said hearing before the undersigned, the merits of said case were fully inquired into and the said United States Judge, after a full consideration of the briefs of counsel, the testimony offered and the said indictment, does hereby make and file the following

Findings of Fact.

First. That heretofore and at the April term of the Grand Jury of the Supreme Court of the District of Columbia an indictment was found charging Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas with having committed the crime or offence against the United States of conspiracy as defined by Section 5440 of the Revised Statutes of the United States. That said indictment was filed in open Court in the Supreme Court of the District of Columbia
610 on or about the 2nd day of October, 1905, and numbered 24,907.

Second. That thereafter and on or about the 13th day of October, 1905, upon the complaint of Clarence S. Houghton, based upon a certified copy of the indictment hereinbefore referred to, complaint was made for the apprehension of said defendant, Moses Haas, to Honorable James Ridgway, United States Commissioner for the Southern District of New York, who thereupon issued a warrant for the arrest of said Haas who was apprehended and brought before said Commissioner for a hearing and admitted to bail during the pendency thereof.

Third. That thereafter and on the 21st day of October, 1905, a hearing upon said matter was had before said United States Commissioner Ridgway, both the United States of America and the said *indictment*, Moses Haas, being represented by counsel. That evidence in behalf of the United States of America was adduced before said Commissioner and briefs filed upon both sides and a full and complete hearing had upon the merits.

Fourth. That thereafter and on or about the 28th day of October, 1905, said United States Commissioner Ridgway rendered his decision in and by which he found that the facts alleged against the defendant, Moses Haas, did not constitute a crime under Section
611 5440 of the Revised Statutes of the United States of America, and thereupon, by the order of said United States Commissioner Ridgway, said defendant Haas was duly discharged from custody.

Fifth. That thereafter and on or about the 5th day of January, 1906, upon the complaint of Henry L. Burnett, founded upon the same indictment which was the basis of the proceedings before United States Commissioner Ridgway, being said indictment numbered 24,907 aforesaid, application was made to the undersigned under Section 1014 of the Revised Statutes of the United States, for the commitment and removal to the District of Columbia for trial of the said defendant, Moses Haas, which was an application similar in all respects to the one so made as aforesaid to United States Commissioner Ridgway.

Sixth. That thereafter and on the 10th day of April, 1906, said defendant Haas was duly arrested under and by virtue of a warrant issued by the undersigned upon said complaint so made to him, and upon arraignment was admitted to bail pending further hearing.

Seventh. That thereafter and on the 25 & 26 days of April, 1906,

a hearing upon said matter was duly had before the undersigned, the United States of America being represented by Honorable Henry L. Stimpson, United States Attorney, for the United States, for the Southern District of New York, and by Honorable Morgan H. Beach, Special Assistant to the Attorney General of the
612 United States of America; and the said defendant, Moses Haas, being represented by Thomas E. Rush, Esq., and Charles W. Ridgway, Esq., as counsel, and by Nash Rockwood of the firm of Rockwood & Salisbury (attorneys for said defendant), also as counsel. That upon said hearing evidence was offered on behalf of the Government and a full and complete hearing was had upon the merits and briefs of counsel for the respective parties filed and duly considered.

Eighth. That the said hearing before the said undersigned was based upon the same indictment and the same character of testimony in all respects as that adduced before and presented to said Honorable James Ridgway, said United States Commissioner.

I further find as

Conclusions of Law.

First. That while the previous decision of Commissioner Ridgway, upon the same facts and evidence presented to me, is not technically *res judicata*, still, in the absence of special circumstances, the decision of any judicial officer having jurisdiction should be held to be conclusive on the same set of facts, and that as the evidence submitted is precisely the same in both cases it would be entirely proper in this case to discharge the prisoner upon the ground that he has already been discharged by the judicial decision
613 of another magistrate having concurrent jurisdiction.

I concur entirely in the conclusions of Mr. Commissioner Ridgway and the grounds upon which he bases them having, however, considered this matter upon the merits I make and file further conclusions of law, as follows:

Second. That the allegations of the said indictment, being the indictment numbered 24,907, do not charge the defendant, Moses Haas, or the other defendants therein named with having committed a crime or offense of conspiracy against the United States within the purview of Section 5440 of the Revised Statutes of the United States of America.

Third. That the allegations of the said indictment, being indictment numbered 24,907, do not charge the defendant, Moses Haas, or the other defendants therein named with having conspired to defraud the United States in any manner whatever within the purview of Section 5440 of the Revised Statutes of the United States of America.

Fourth. That the allegations of said indictment, being indictment known as number 24,907, do not charge the defendant, Moses Haas, or the other defendants therein named with having committed a crime, or with having committed any crime or offense against the United States of any name or nature whatsoever.

Fifth. That there is an entire absence of probable cause
614 to believe the defendant, Moses Haas, guilty of any crime or offense of any nature whatsoever against the said United States of America.

Sixth. That the defendant Moses Haas should be discharged.

By reason of the foregoing findings of fact and conclusions of law, I, George C. Holt, United States Judge in and for the Southern District of New York, by virtue of the authority in me vested by law, do therefore

Order, That the said defendant Moses Haas be and he is hereby discharged from custody, and the sureties upon the bond or undertaking furnished by him are hereby exonerated and relieved of and from all further liability.

(Sd.) GEO. C. HOLT, *J.*

[L. S.]

A true copy.
(Sd.) THOS. ALEXANDER, *Clerk.*

615 In the District Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA, Plaintiff,
against
MOSES HAAS, Defendant.

Opinion of United States Judge George C. Holt, Discharging Defendant.

616 Opinion of United States Judge George C. Holt, Discharging Defendant.

In the District Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA, Plaintiff,
against
MOSES HAAS, Defendant.

Henry L. Simpson, U. S. Attorney, for the United States.
Morgan H. Beach, Spec. Ass't to Att'y Gen'l, of Counsel.
Rockwood & Salisbury, Attorneys for Defendant.
Thomas E. Rush and Charles W. Ridgeway of Counsel.

HOLT, *J.:*

This is an application under Section 1014 of the Revised Statutes of the United States for the commitment and removal to the District of Columbia for trial of the defendant Moses Haas.

On October 2nd, 1905, the Grand Jury of the Supreme Court of the District of Columbia indicted Edwin S. Holmes, Jr., Frederick A. Pas[illegible] and the defendant Moses Haas. Holmes resided in

Washington, D. C., and Peckham and Haas resided in New York.

A bench warrant was issued by the Supreme Court of the
617 District of Columbia for the apprehension of the defendants upon which an application was made to me under Section 1014 of the Revised Statutes of the United States for the commitment and removal of the defendant Haas to the District of Columbia. A similar previous application was made to Commissioner Ridgeway, a Commissioner of this Court, under which a warrant was issued, Haas arrested and hearing had. The Government put in evidence the indictment and proved the prisoner's identity; thereupon the prisoner's counsel moved to discharge the prisoner upon the ground that the indictment showed upon its face that no offense had been committed. Commissioner Ridgeway, after an elaborate argument, rendered his decision, in which he held that the indictment did not allege that any offense had been committed, and discharged the prisoner. Thereafter this application was made to me. The Government's counsel represented that an important and novel question of law was involved and that as no appeal by the Government was authorized from the decision of the Commissioner, it was desired to submit the question again for consideration.

The defendant's counsel claims that the decision of Commissioner Ridgeway should be held to be conclusive. He admits such a decision is not technically res adjudicata and the authorities so held. The decision of a commit-ting magistrate refusing to hold a prisoner for trial or removal, like the Grand Jury's decision in refusing to find an indictment, is not res adjudicata, and another application can be made upon the same facts. (In re Martin 5 Blatch.,
618 307; Cooley's Const. Lim., 401; 1 Bish., New Cr. Law, sec. 1014, Par. 2; Com. v. Hamilton, 129 Mass. 479.) But ordinarily in the absence of special circumstances the decision of any judicial officer having jurisdiction should be held to be conclusive on the same set of facts. In this application I sit as a committing magistrate with exactly similar jurisdiction as that of the Commissioner. The evidence submitted is precisely the same in both cases, and it would be entirely proper in this case to discharge the prisoner upon the ground that he has already been discharged by the judicial decision of another magistrate having concurrent jurisdiction. Moreover, I have read the very elaborate and able opinion of Mr. Commissioner Ridgeway, and concur entirely in his conclusions and in the grounds upon which he bases them. But as the questions involved is a novel and important one and has been argued very elaborately by counsel upon both sides, I will add a few suggestions, in addition to those contained in the opinion of Mr. Commissioner Ridgeway, which seems to me to have weight.

The indictment charges the defendant with the crime of conspiracy under Section 5440 of the Revised Statutes of the United States. That section provides that:

"If two or more persons conspire either to commit an offense "against the United States, or to defraud the United States in any "manner, or for any purpose, and one or more of such parties do "any act to effect *the* object of the conspiracy, all the parties to such "conspiracy shall be liable to a penalty."

619 The indictment which is very long, alleges in substance that the Department of Agriculture at Washington, D. C., is required by law to collect information about the crops and to make monthly crop reports, including reports upon the cotton crop; that Holmes was an Associate Statistician in said Department; that it was the duty of all the officers and employees of the Department, including Holmes, not to divulge the information embodied in the crop reports before the reports were promulgated by the Secretary of Agriculture; that Holmes, Peckham and Haas entered into a conspiracy under which Holmes was to furnish to Peckham and Haas information of what the crop reports were to be before they were published, in reliance upon which Peckham and Haas were to conduct speculation in cotton and divide the profits among the three defendants; that Holmes furnished such information and Peckham and Haas carried on such speculations and that large profits were divided between them. The indictment contains two counts. The first count alleges that by reason of these facts the parties indicted were guilty of a conspiracy to commit an offense against the United States, and the second count alleges a conspiracy by reason of the same facts to defraud the United States. Counsel for the defendant bases his motion to discharge the prisoner on the proposition that the facts do not show that the defendant conspired either to commit an offense against the United States or defraud the United States.

The counsel for the Government concedes that there is no Statute of the United States which makes such acts as are alleged in
620 the indictment an offense, and that there are no written rules or regulations which the Department of Agriculture has adopted, pursuant to any Statute or otherwise, prohibiting such transactions. He admits that such acts would not constitute an offense anywhere in the United States, except in the District of Columbia. His claim is that the law of Maryland as it existed at the time of the cession by that State to the General Government of the District of Columbia, was continued and still exists in the District of Columbia; that the common law was a part of the law of Maryland at that time; that it is therefore now a part of the law of the District of Columbia; that misconduct in office is an offense at common law; that Holmes was guilty of misconduct in office; that the defendants conspired to have Holmes do acts which amounted to misconduct in office; and that the defendants therefore are guilty of a conspiracy to commit an offense against the United States.

In the first place, it seems to me that whatever law exists in the District of Columbia, which is based on the law of Maryland, or the common law as distinguished from the Statute law of the United States, is analogous to, and is to be deemed precisely similar to the State law in the rest of the United States. It is just as though the State of Maryland had never ceded any district to the Government, and the Capitol had been established in the state of Maryland. In such a case, no one would pretend that an offense against the law of Maryland was an offense against the United States.

621 In my opinion, Section 5440, relating to a conspiracy to commit an offense against the United States only relates to

such offenses as are offenses against the United States as a distinct sovereign. Nothing is better than that there are no common law offenses against the United States. (United States v. Eaton, 144 U. S., 676, and cases cited.) Therefore in my opinion, assuming that Holmes could be indicted for misconduct in office in the District of Columbia, no person can be indicted in the Federal Courts for a conspiracy to commit misconduct in office, especially a person who does not reside in the District of Columbia.

In the next place, the question is whether, on the facts alleged in the indictment, Holmes has been guilty of misconduct in office in the sense of the common law; no one would pretend that every form of misconduct in office in the ordinary sense is a crime. Bishop substantially defines misconduct in office in its penal sense as any act or omission in breach of a duty of public concern by one who has accepted public office, provided his act is wilful and corrupt and is not judicial. (Bishop's New Crim. Law, Sec. 459, 460).

In my opinion, on the facts alleged, it is doubtful whether Holmes was a public officer. He is described in the indictment as an "Associate Statistician" in the Bureau of Statistics of the Agricultural Department. The Act of July 14th, 1890, Chapter 707, enumerates the persons engaged in the Department of Agriculture under the special title of "Clerks and Employees." This list includes
622 a Statistician; there is no mention in it of such a person as an associate Statistician." But, as the Statistician is put under the list of clerks and employees, the presumption is that an Associate Statistician is a clerk and not a public officer within the meaning of the law and in a legal sense. A mere clerk in a public office is not a public officer. (United States v. Smith, 124 U. S., 525.)

In the next place, the duty violated in misconduct in office must be legal duty. The indictment alleges that Holmes was charged with the duty of keeping secret the cotton crop reports, but the indictment contains no allegation showing how he was charged or by what authority he was charged.

In King v. Everett, (8 Barnewall & Cresswell's Reports, 114) the defendant was indicted for soliciting a Custom Officer to permit goods to be imported without paying duty. The defendant was convicted. A motion was made in arrest of judgment, on the ground that the indictment did not allege the fact from which the duty arose. Lord Tenterden said:

"The allegation that Hooper was a person employed in the service "of the customs is an allegation of fact. The allegation that it was "his duty to seize goods which upon importation were forfeited, be- "ing allegation of matter of law. That being so, the fact from which "that duty arose, ought to have been stated in the court."

A fair inference from the language of this indictment is and the counsel for the Government admits that there had been no formal rule promulgated imposing a duty upon the employees of the Agricultural Department to keep the crop information secret before it was published. It may be assumed that it was understood in the office that it should be kept secret, and that it was a dishonorable
623 act on the part of Holmes to publish it; but we are dealing with a question of crime. Unfaithful, dishonorable or

treacherous conduct, however, censurable morally, is not a crime, unless made so by law. If Holmes, under this indictment can be convicted of crime, the Secretary of a Judge who reveals the contents of a Judge's opinion before it is handed down, or an Attorney who betrays the confidence of his client, or a Senator who tells what had taken place in Executive Session would be convicted of crime, without any statute on the subject. The Government relies particularly upon the case of Tyner v. United States, (23 App. D. C., 324). That case arose upon a demurrer to an indictment against Tyner and another for conspiracy. Tyner was an Assistant Attorney in the Post Office Department and an officer of the department. He was require by the regulations of the department to perform a certain duty, and it was alleged that he had entered into a corrupt conspiracy not to perform the duty. I regard the Tyner case as an extreme case, but the facts in it are very much stronger than in this case. With the highest respect for the distinguished court which rendered the decision I am not able to consider it as controlling in this case.

The second count of the complaint charges that the acts in question defrauded the Government of the United States, but it seems to me that this claim is entirely untenable. Perhaps it is not necessary that in all cases the United States be deprived of money or property in order to be defrauded. It was held in the United States v.
624 Bunting, (82 Fed., 883) that two persons were guilty of a conspiracy to defraud the United States when one of them, an applicant for a Government position, obtained an appointment by having the other assume his name and pass the civil service examination. But, in that case, the fraud upon the United States was alleged under Section 5418 of the United States Revised Statutes, which provides that any person who utters or presents to any officer of the United States a false writing for the purpose of defrauding the United States, is guilty of a crime. The United States, by that proceeding, was deceived and defrauded into appointing a person to a public position who presumably was not fit for it; but I cannot see that cases of this kind have any bearing upon the question whether Holmes, in divulging information to one person which had been collected by the Government for the purpose of being divulged to the public generally, defrauded the United States of anything by enabling the person to whom he divulged it to speculate and make money on the information. The United States was not defrauded of anything. One citizen simply received information before others which was intended to be given to all the citizens and which was collected for the purpose of being ultimately furnished to all.

In removal cases the magistrate undoubtedly should not refuse removal upon technical or doubtful questions. Those questions should properly be left to the determination of the Court in which the indictment has been found. But when an indictment appears, upon inspection, to clearly charge no offense, so that, in the opinion of the commit-ing magistrate, no conviction can possibly be
625 had, it is the duty of the magistrate not to order the removal of a citizen to a distant State or District for trial.

The simple fact is that these defendants, if the allegations of the

indictment are true, were guilty of grossly dishonorable conduct, which might very properly be made criminal by Statute. The defendant's counsel asserted on the argument that a bill for that purpose was pending in Congress. If such an Act is passed, persons guilty of such misconduct can be criminally punished; but, in my opinion, until it is passed, they cannot.

My conclusion is that the defendant should be discharged.

626 Circuit Court of the United States for the Southern District of New York.

THE UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

Indictment.

Conspiracy to Commit an Offense Against the U. S.

Rev. Stat., Sec. 5440, Sec. 5441.

1 Count.

627 *Indictment.*

Conspiracy to Commit an Offense Against the U. S.

In the Circuit Court of the United States of America for the Southern District of New York, of the May Term, in the Year Nineteen Hundred and Eight.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Grand Jurors for the United States of America, empaneled and sworn in the Circuit Court of the United States for the Southern District of New York, and inquiring for that district, upon their oath present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the thirty-first day of May, in the year nineteen hundred and five, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as
628 assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid when-

over the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published.

That each of said reports was prepared by the said statistician or the said associate statistician in the manner aforesaid, from
629 certain information collected by the said Bureau from divers sources approved by the said Bureau; amongst others being certain correspondents of the said Bureau of Statistics residing in those parts of the United States where were grown the particular crops upon which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said Bureau, known as Statistical Agents, and certain other expert employees of the said Bureau, whose duty it was to travel throughout the United States and ascertain the conditions of the said crops.

And that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted by said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said
630 reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people

of the United States, and that said crop reports were prepared at great expense to the said United States and were to be fair, impartial, correct and accurate; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture, established and sanctioned by the said Secretary, under which the giving out to the public of any information collected by the said Bureau of Statistics or its said officers or its said employees, to be used in the preparation of or to be contained in any of said crop reports, was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published. And that during the time and times aforesaid it was the duty of the said statistician and of the said associate statistician and said other officials and employees aforesaid of the said Bureau of Statistics to
631 prepare a true and accurate report upon each of the said crops, from the information as to said crops obtained as aforesaid, and without regard to the influence which any such report might have upon the market price of the crop therein mentioned.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matters and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employees of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the
632 said associate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture as aforesaid, was a report upon the cotton crop of the United States, which became known as and was called the cotton-crop report, and which said cotton crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November, in the year nineteen hundred and three, and thence continuously until the ninth day of June, in the year nineteen hundred and five, one Edwin S. Holmes, Junior, held and occupied the office of, and was, such associate statistician in the said Bureau of Statistics in the Department of Agriculture, and as such was an officer of the United States and a person acting for and on behalf of the United States in an official function under and by authority of the said Department and Bureau, and as such associate statistician the said Edwin S. Holmes, Junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports, including said cotton-crop report, and, in the absence of the said statistician from his office, the said said Edwin S. Holmes, Junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employees of said Bureau as aforesaid, all of the
633 said crop reports, including the said cotton-crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports, including said cotton-crop reports, and, in the absence of the said statistician, in the performance of his duties in preparing said crop reports, including the said cotton-crop reports, he, the said Edwin S. Holmes, Junior, did before the official approval and issuance and publication of each of said crop reports, including the said cotton-crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton-crop reports, were prepared, and of the matters and things and other information which were to be contained in each of said crop reports, including said cotton-crop reports.

And that during the period last aforesaid it was the duty of said Edwin S. Holmes, Junior, as such associate statistician, whenever he prepared or assisted in preparing any of said reports, to prepare and assist in preparing a true and accurate report, from the information as to said crops obtained as aforesaid, and without regard to the effect which such reports might have upon the market price of the crop therein mentioned, and honestly and carefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter and information from which said crop
634 reports, including said cotton-crop reports, were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton-crop reports, knowledge of which was so, as aforesaid, acquired by him, the said Edwin S. Holmes, Junior, as such associate statistician, until the said reports had been prepared, officially approved, and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, Junior, as such associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau of Statistics any of the statistics and statistical matters and things

and other information last aforesaid, knowledge of which was so, as aforesaid, acquired by him, except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises aforesaid, in so far as they were then existent, were known to a certain Frederick A. Peckham and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth, and to a certain Lewis C. Van Riper.

That on the thirty-first day of May, in the year nineteen hundred and five, in the City of New York and the Southern District of New York, said Moses Haas and said Frederick A. Peckham unlawfully did conspire, combine, confederate and agree together with said Lewis C. Van Riper, who is not made a defendant
635 herein, to commit an offense against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States, and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, Junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the Grand Jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, Junior, to do certain acts in violation of his lawful duty, that is to say, to induce him, the said Edwin S. Holmes, Junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, Junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton-crop report, which was to be issued, as hereinbefore set forth, in the month of June next ensuing, and in advance of the time when the matter and information contained in such cotton-crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Frederick A. Peckham and the said Lewis C. Van Riper, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, Junior, in the performance of his duty as such associate statistician.

636 *Overt Acts.*

1. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the City of Washington, in the District of Columbia, on the said thirty-first day of May, in the year nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, Junior, a certain share, to wit, a sum equal to one-fourth, of whatever moneys they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper or either of them should acquire through speculations in cotton

based upon information to be furnished by the said Edwin S. Holmes, Junior, to them, which information was to be contained in the cotton crop report to be issued in the month of June then next ensuing.

2. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New York, in said Southern District of New York, on the said thirty-first day of May, in the year nineteen hundred and five.

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and
637 to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said City of New York, in the said Southern District of New York, to the said City of Washington, in said District of Columbia.

4. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, Junior, at the said City of Washington, in said District of Columbia, certain information which was to be contained in said cotton crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin S. Holmes, Junior, in the performance of his duties as such associate statistician.

5. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the said City and Southern District of New York, on the said second day of June, in the year nineteen hundred and five, unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, Junior, to the said Lewis C. Van Riper.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas and the said Frederick A. Peckham, at the time and place and in manner and form aforesaid,
638 unlawfully did conspire together, and with others, to commit an offense against the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the United States, and contrary to the form of the Statute of the same in such case made and provided.

HENRY L. STIMSON,
United States Attorney.

(Endorsed:) U. S. Circuit Court. The United States of America vs. Moses Haas and Frederick A. Peckham. Indictment. Con-

spiracy to commit an offense against the United States. U. S. Rev. Stat. Sec. 5440, 5451. Henry L. Stimson, U. S. Attorney. A True Bill. John E. Holahan, Foreman. U. S. Circuit Court, Southern District N. Y., Filed May 29, 1908. John A. Shields, Clerk.

A copy.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

639 Circuit Court of the United States, for the Southern District of New York.

UNITED STATES OF AMERICA
vs.
THEODORE H. PRICE and MOSES HAAS.

Indictment.

Conspiracy to Commit an Offense Against the United States.

Rev. St., 5440, 5451.

2 Counts.

640 Indictment: Conspiracy to Commit an Offense Against the United States.

In the Circuit Court of the United States of America for the Southern District of New York, of the May Term, in the Year Nineteen Hundred and Eight.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Grand Jurors for the United States of America, empaneled and sworn in the Circuit Court of the United States for the Southern District of New York, and inquiring for that district, upon their oath present:

That in the administrative arrangement of the business of the Department of Agriculture of the said United States on and before the thirty-first day of May, in the year nineteen hundred and five, there was, and thence hitherto there has been, a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as

641 assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said

Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain reports upon the conditions of certain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with which explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published.

That each of said reports was prepared by the said statistician or the said associate statistician in the manner aforesaid, from
612 certain information collected by the said Bureau from divers sources approved by the said Bureau; amongst others being certain correspondents of the said Bureau of Statistics residing in those parts of the United States where were grown the particular crops upon which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said Bureau, known as Statistical Agents, and certain other expert employees of the said Bureau, whose duty it was to travel throughout the United States and ascertain the conditions of the said crops.

And that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirements of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

613 And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were to be fair,

impartial, correct and accurate; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops mentioned therein.

That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture, established and sanctioned by the said Secretary, under which the giving out to the public of any information collected by the said Bureau of Statistics or its said officers or its said employees to be used in the preparation of or to be contained in any of said crop reports was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published. And that during the time and times aforesaid it was the duty of the said statistician and of the said associate statistician and said other officals and employees aforesaid of the said Bureau of Statistics to prepare, a true and accurate report upon each of the said crops from the information as to said crops obtained as aforesaid, and without regard
641 to the influence which any such report might have upon the market price of the crop therein mentioned.

And that during the time and times aforesaid the said statistician and the said associate statistician and the other officers and employees aforesaid of the said Bureau of Statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of Statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matters and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid continued save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employees of the said Bureau of Statistics, and, in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid,
645 and so submitted to and officially approved by the said Secretary of Agriculture as aforesaid, was a report upon the cotton-crop of the United States, which became known as and was called the cotton-crop report, and which said cotton-crop report during the time and times aforesaid was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November, in the year nineteen hundred and three, and thence continuously until the ninth day of

June, in the year nineteen hundred and five, one Edwin S. Holmes, Junior, held and occupied the office of, and was, such associate statistician in the said Bureau of Statistics in the Department of Agriculture, and as such was an officer of the United States and a person acting for and on behalf of the United States in an official function under and by authority of the said Department and Bureau, and as such associate statistician the said Edwin S. Holmes, junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports including said cotton crop report, and, in the absence of the said statistician from his office, the said Edwin S. Holmes, junior, as such associate statistician, was during the period last aforesaid charged with the duty of preparing with the aid and assistance of said other officers and employees of said Bureau as aforesaid all of the said crop reports including the said cotton-crop reports as aforesaid, and that during the period last aforesaid, in the per-
646 formance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports, including said cotton-crop reports, and, in the absence of the said statistician, in the performance of his duties in preparing said crop reports, including the said cotton-crop reports, he, the said Edwin S. Holmes, junior, did, before the official approval and issuance and publication of each of said crop reports, including the said cotton-crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton crop reports, were prepared and of the matters and things and other information which were to be contained in each of said crop reports including said cotton crop reports.

And that during the period last aforesaid it was the duty of said Edwin S. Holmes, junior, as such associate statistician, whenever he prepared or assisted in preparing a true and accurate report from the information as to said crops obtained as aforesaid, and without regard to the effect which such report might have upon the market price of the crop therein mentioned, and honestly and carefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter and information from which said crop reports, including said cotton-crop reports, were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton-crop reports, knowledge of which was so as aforesaid ac-
647 quired by him the said Edwin S. Holmes, Junior, as such associate statistician, until the said reports had been prepared, officially approved and issued and published as aforesaid, and it was the duty of the said Edwin S. Holmes, Junior, as said associate statistician, to thereafter honestly and carefully guard and keep secret and not divulge to any person not employed in or connected with said Bureau any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so as aforesaid acquired by him except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises aforesaid, in so far as they were then existent were known to a certain Theodore H. Price and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth.

That on the thirty-first day of May, in the year nineteen hundred and five, in the City of New York, and the Southern District of New York, one Moses Haas and one Theodore H. Price unlawfully did conspire, combine, confederate and agree together to commit an offense against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States, and a person acting for and on behalf of the said United States in an official function under and by virtue of a certain department and office of the Government thereof; that is to say, to the said Edwin
648 S. Holmes, junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the Grand Jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, junior, to do certain acts in violation of his lawful duty; that is to say, to induce him, the said Edwin S. Holmes, Junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, Junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was required by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton-crop report which was to be issued, as hereinbefore set forth, in the month of June next ensuing, and in advance of the time when the matter and information contained in such cotton-crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Theodore H. Price, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, Junior, in the performance of his duty as such associate statistician.

Overt Acts.

1. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful
649 conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price, and Moses Haas afterwards, to wit, on the thirty-first day of May, in the year nineteen hundred and five, at the said City of New York, and in the said Southern District of New York, unlawfully did meet together to confer concerning the said unlawful conspiracy, combination, confederation and agreement.

2. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said City of New York, in the said Southern District of New York, to the City of Washington, in the District of Columbia.

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, on the said first day of June, in the year nineteen hundred and five, and at the City of Washington, in the District of Columbia, aforesaid, the said Moses Haas unlawfully did promise and offer to give to the said Edwin S. Holmes, Junior, who was then, as aforesaid, an officer of the United States and a person act-
650 ing for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof, a sum of money the amount of which is to the Grand Jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, Junior, in violation of the said duty of secrecy of him, the said Edwin S. Holmes, Junior, as hereinbefore set forth, and in advance of the official issue and publication of the said cotton-crop report, which was to be issued in the said month of June, to furnish to him, the said Moses Haas, and to the said Theodore H. Price, the statistics, matters and information which were to be contained in the said last mentioned report.

4. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on said first day of June, in the year nineteen hundred and five, at the City of Washington, in the District of Columbia aforesaid, unlawfully did receive from the said Edwin S. Holmes given information which was to be issued in said month of June, which information had been acquired by the said Department and Bureau in the manner hereinabove set forth.

5. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and
651 to effect the object of the same, at the City of Washington, in the District of Columbia aforesaid, on the second day of June, in the year nineteen hundred and five, and before the official issuance and publication of the said cotton-crop report, the said Moses Haas unlawfully did receive from said Edwin S. Holmes, Junior, further information which was to be contained in said cotton-crop report which was to be issued in said month of June, and which information had been acquired by the said department and bureau in the manner hereinabove set forth.

6. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price, on the said first and second days of June, in the year nineteen hundred and five, and before the official issuance and publication of the said cotton-crop report, at and within the said City and Southern District of New York, unlawfully did receive from the said Moses Haas the information last above mentioned.

7. And the Grand Jurors aforesaid, upon their oath aforesaid, do

further present that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, on the said second day of June, in the year nineteen hundred and five, and at the District of Columbia aforesaid, unlawfully did give to the said Edwin S. Holmes, Junior, the sum of one thousand dollars.

652 And so the Grand Jurors aforesaid, upon their oath aforesaid do say, that the said Theodore H. Price, and Moses Haas, at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others, to commit an offense against the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statutes of the same in such case made and provided.

653 *Second Count.*

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that on the thirty-first day of May, in the year nineteen hundred and five, under the circumstances and conditions in the first count of this indictment set forth and averred, pertaining to the organization and existence of the Bureau of Statistics in the Department of Agriculture, and pertaining to the employment of the said officers and employees of the said bureau and department in that count mentioned, and their duties in regard to the preparation, issuance, publication and character of the crop reports therein mentioned, including the cotton-crop reports, and pertaining to the custom and practice which prevailed in said bureau with reference to the keeping secret of the information collected by said bureau in the preparation of said crop reports, and information to be contained in said reports, and pertaining to the duty which was imposed upon said officers and employees of the said department and bureau therein mentioned of keeping secret and not divulging any of such information, and pertaining to the employment and duties as associate statistician of said Edwin S. Holmes, Junior, as therein set forth, and which are now here again alleged to have existed on the day in this count above mentioned, and while the said Edwin S. Holmes, Junior, was, as averred in said first count of this indictment, such officer of the United States and a person acting for and on behalf of the United States in an official function under and by authority of the said department and bureau, and at the said

654 City of New York in the said Southern District of New York, the said Moses Haas and the said Theodore H. Price unlawfully did conspire, combine, confederate and agree together to commit an offense against the United States; that is to say; the offense of promising, offering and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say; to the said Edwin S. Holmes, Junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the Grand Jurors aforesaid unknown, to induce him, the said Edwin S. Holmes,

Junior, to do certain acts in violation of his lawful duty; that is to say: to induce him, the said Edwin S. Holmes, Junior, in violation of the duty of him, the said Edwin S. Holmes, Junior, to prepare and assist in preparing the said cotton-crop reports truly and accurately from the information as to said crops obtained as aforesaid, and without regard to the influence of such reports upon the market price of cotton, unlawfully and corruptly in assisting in preparing the said cotton-crop report which was to be issued in the month of June then next following, to cause and procure said last mentioned report to be untrue and inaccurate by causing such report to state that there had been planted in cotton throughout the United States a greater number of acres of land, and that the condition of the said cotton crop was better than would be shown by such
655 report if it had been based upon the information as to said cotton crop obtained as aforesaid, and had been truly and accurately prepared; and further to induce him, the said Edwin S. Holmes, Junior, in violation of the said duty of him, the said Edwin S. Holmes, Junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as associate statistician as aforesaid, and in advance of the official issue and publication of the said last mentioned report, and in advance of the time when the matters and information to be contained in said last mentioned cotton-crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Theodore H. Price, the statistics, matter and information which were to be contained in the said last mentioned report, knowledge of which was, as aforesaid, acquired by the said Edwin S. Holmes, Junior, in the performance of his duty as such associate statistician.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that in pursuance of said last mentioned unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the places and at the times in the first count hereof set forth, the said Theodore H. Price and the said Moses Haas each did do and perform the several overt acts averred and alleged in the said first count to have been done and performed by the said Moses Haas and the said Theodore H. Price in pursuance of and to effect the object of the conspiracy in the said first
656 count averred.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say that the said Moses Haas and the said Theodore H. Price, at the time and place and in the manner and form in this count aforesaid, unlawfully did conspire together to commit an offense against the United States, and did each do acts to effect the object of said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the Statute of the same in such case made and provided.

HENRY L. STIMSON,
United States Attorney.

657 (Endorsed:) U. S. Circuit Court. The United States of America vs. Theodore H. Price and Moses Haas. Indictment

Conspiracy to commit an offense against the United States. U. S. Rev. St. 5440 and 5451. Henry L. Stimson, U. S. Attorney. A True Bill. John E. Holahan, Foreman. U. S. Circuit Court, Southern District N. Y., Filed May 29, 1908. John A. Shields, Clerk.

A copy.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

658 EXHIBIT 18.

3.

Circuit Court of the United States for the Southern District of New York.

THE UNITED STATES
vs.
EDWIN S. HOLMES, JR., MOSES HAAS, and FREDERICK A. PECKHAM.

(Copy.)

Indictment.

Conspiracy to Defraud the U. S.

§5440—1 Count.

659 In the Circuit Court of the United States of America for the Southern District of New York, of the May Term, A. D. 1908.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Grand Jurors for the United States of America, empaneled and sworn in the Circuit Court of the United States for the Southern District of New York and inquiring for that district, upon their oath, do present:

That before and during the three years last past the United States, through the Department of Agriculture and a certain bureau of that department, to wit, the Bureau of Statistics, has exercised the governmental function of acquiring and diffusing among the people of the United States useful information on subjects connected with agriculture, including the subject of cotton; that in acquiring such information pertaining to cotton the United States, through the said department and bureau, has made use of divers agencies, to wit, among others correspondence with cotton planters and dealers in and *and* ginners of cotton, through employees and agents of the said department and bureau located in the several States where cotton is grown, and through special investigations in the field by employees and agents of the said department and bureau; and that in diffusing the said information pertaining to cotton the United States has issued, on

or near the third day of each of the months of June, July, August, September, October and December in each year crop reports
650 embracing statements, based upon the information so acquired, of the conditions of the cotton crop, by States, in the United States, with such explanations, comparisons, and information as might be useful for illustrating that matter—which said cotton-crop reports have been by law required to be submitted to and officially approved by the Secretary of Agriculture before so being issued or published; and that under the practice, custom and regulation of the said department established and sanctioned by the said Secretary of Agriculture, no officer or employee thereof to whom such information might come by reason of his office or employment has been permitted to issue, publish or divulge to unauthorized persons, and all such officers and employees have been prohibited from issuing, publishing or divulging to unauthorized persons, any such information so acquired as aforesaid, or any such cotton-crop report, or any information indicating the probable contents or character of the same, in advance of its official issuance and publication, or without its first being submitted to and officially approved by the said Secretary.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that Moses Haas, Edwin S. Holmes, Junior, and Frederick A. Peckham, each late of the said Southern District of New York, on the thirty-fist day of May, in the year of our Lord one thousand nine hundred and five, at and within the said Southern District of New York unlawfully did knowingly conspire, com-
651 bine, confederate and agree together, and with one Lewis C. Van Riper, who is not made a defendant herein, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the said department and bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described; that is to say:

The said Edwin S. Holmes, Junior, before and on the day last aforesaid, was an officer and employee of the said department and bureau, to wit, associate statistician thereof; and a portion of the information upon which the said cotton crop report was to be based, and which had been acquired by the said department and bureau in the manner aforesaid, and indicated the probable contents and character of the said report, had come and was known to the said Edwin S. Holmes, junior, in his capacity as such officer and employee; and thereafter, and before the time of the official issuance and publication of the said report, other like information would come to and be known to the said Edwin S. Holmes, Junior, in his said capacity.

The said Frederick A. Peckham, Moses Haas and Lewis C.
652 Van Riper, who then and there were neither officers nor employees either of the said department or of the said bureau, and who then and there were persons not in any manner authorized to have or know the information last aforesaid, or be informed as to

the probable contents or character of the said crop report in advance of its said official issuance and publication, or without such report first being submitted to and officially approved by the said Secretary, and who well knew all the premises in this indictment above set forth, were thereafter, and in advance of the said official issuance and publication of the said cotton-crop report, to obtain and receive from the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, Junior, also then well knowing the said premises, was to give and divulge to them the said Frederick A. Peckham, Moses Haas and Lewis C. Van Riper information which as aforesaid had and would come and be known to him the said Edwin S. Holmes, Junior, in his said capacity as an officer and employee of the said department and bureau, and this without the said cotton-crop report being first submitted to and officially approved by thes said Secretary of Agriculture; it being the design and intention of the said Frederick A. Peckham, Moses Haas, Edwin S. Holmes, Junior, and Lewis Van Riper in so doing to make use of the said information, before the lawful issuance and publication of the said report, for their pecuniary benefit, in speculating in cotton, in view of the probable effect upon
663 the market price of that commodity which the subsequent lawful issuance and publication of the said cotton-crop report would have, and in other ways to the said Grand Jurors unknown.

Overt Acts.

1. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, at the District of Columbia, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five, unlawfully did promise and offer to give to the said Edwin S. Holmes, Junior, a certain share of whatever moneys, they, the said Moses Haas and Frederick A. Peckham and the said Lewis C. Van Riper, or either of them, should acquire through speculations in cotton based upon information to be furnished by the said Edwin S. Holmes, Junior, to them, which information had been or should be acquired by the said Edwin S. Holmes, Junior, in his official capacity as to the probable contents of the cotton-crop report to be issued in the month of June then next ensuing.

2. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas unlawfully did meet and confer with the said Lewis C. Van Riper at the City of New York,
664 in the said Southern District of New York, on the said thirty-first day of May, in the year of our Lord nineteen hundred and five.

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the

first day of June, in the year of our Lord nineteen hundred and five, unlawfully did journey from the said City of New York in said Southern District of New York to the said City of Washington, said District of Columbia.

4. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, unlawfully did obtain from the said Edwin S. Holmes, Junior, at said District of Columbia, certain information which was to be contained in said cotton-crop report to be issued in said month of June, nineteen hundred and five, and which had been acquired by the said Edwin C. Holmes, Junior, in the performance of his duties as such associate statistician.

5. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlaw-
665 ful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas at the said City and Southern District of New York on the said second day of June, in the year nineteen hundred and five unlawfully did communicate the said information so obtained as last aforesaid by him from the said Edwin S. Holmes, Junior, to the said Lewis C. Van Riper.

6. And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said Moses Haas, Edwin S. Holmes, Junior, and Frederick A. Peckham, at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

HENRY L. STIMSON,
United States Attorney.

(Endorsed:) U. S. Circuit Court. The United States of America vs. Edwin S. Holmes, Jr., Moses Haas and Frederick A. Peckham. Indictment. Conspiracy to defraud the United States. U. S. Rev. Stat. Sec. 5440. Henry L. Stimson, U. S. Attorney. A True Bill. John H. Holahan, Foreman. U. S. Circuit Court, Southern District of N. Y. Filed May 29, 1908. John A. Shields, Clerk.

A Copy.

JOHN A. SHIELDS, *Clerk.*

666 EXHIBIT 19.

Circuit Court of the United States for the Southern District of New York. No. 4.

THE UNITED STATES
vs.
THEODORE H. PRICE, EDWIN S. HOLMES, JR., MOSES HAAS.

(Copy.)

Indictment.

Conspiracy to Defraud the United States.

Rev. St., §5440.

667 *Indictment.*

In the Circuit Court of the United States of America for the Southern District of New York, of the May Term, in the Year Nineteen Hundred and Eight.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The Grand Jurors for the United States of America, empaneled and sworn in the Circuit Court of the United States for the Southern District of New York, and inquiring for that district, upon their oath present, that before and during the three years last past the United States, through the Department of Agriculture and a certain bureau of that department, to wit, the Bureau of Statistics, has exercised the governmental function of acquiring and diffusing among the people of the United States useful information on subjects connected with agriculture, including the subject of cotton; that in acquiring such information pertaining to cotton the United States, through the said department and bureau, has made use of divers agencies, to wit, among others correspondence with cotton planters and dealers in and ginners of cotton, through employees and agents of the said department and bureau located in the several States where cotton is grown, and through special investigations in the field by employees and agents of the said information pertaining to cotton the United States has issued, on or near the third day of each of the months of June, July, August, September, October and December in each year
668 crop reports embracing statements, based upon the information so acquired, of the conditions of the cotton crop by States, in the United States, with such explanations, comparisons, and information as might be useful for illustrating that matter,—which said cotton-crop reports have been by law required to be submitted to and officially approved by the Secretary of Agriculture before so being issued or published; and that under the practice, custom and regulation of the said department established and sanc-

tioned by the said Secretary of Agriculture, no officer or employee thereof to whom such information might come by reason of his office or employment has been permitted to issue, publish or divulge to unauthorized persons, and all such officers and employees have been prohibited from issuing, publishing or divulging to unauthorized persons, any such information so acquired as aforesaid, or any such cotton-crop report, or any information indicating the probable contents or character of the same, in advance of its official issuance and publication, or without its first being submitted to and officially approved by the said Secretary.

And the Grand Jurors aforesaid, upon their oath aforesaid do further present, that Theodore H. Price, Moses Haas, and Edwin S. Holmes, Junior, each late of the City of New York, in the said Southern District of New York, on the thirty-first day of May in the year nineteen hundred and five, at and within the said City and Southern District of New York unlawfully did knowingly
669 conspire, combine, confederate and agree together, and with divers other persons to the said Grand Jurors unknown, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton-crop report to be issued and published by the said department and bureau in the next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described; that is to say:

The said Edwin S. Holmes, Junior, before and on the day last aforesaid, was an officer and employee of the said department and bureau, to wit, Associate Statistician thereof, and a portion of the information upon which the said cotton crop report was to be based, and which had been acquired by the said department and bureau in the manner aforesaid, and indicated and probable contents and character of the said report had come and was known to the said Edwin S. Holmes, Junior, by his capacity as such officer and employee; and thereafter, and before the time of the official issuance and publication of the said report, other like information would come to and be known to the said Edwin S. Holmes, Junior, in his said capacity.

The said Theodore H. Price and Moses Haas, who then there were neither officers nor employees either of the said department or of the said bureau, and who then and there were persons not in any
670 manner authorized to have or know the information last aforesaid, or be informed as to the probable contents or character of the said crop report in advance of its said official issuance and publication, or without such report first being submitted to and officially approved by the said Secretary, and who well knew all the premises in this indictment above set forth, were thereafter, and in advance of the said official issuance and publication of the said cotton-crop report, to obtain and receive from the said Edwin S. Holmes, Junior, and the said Edwin S. Holmes, junior, also then well knowing the said premises, was to give and divulge to them the

said Theodore H. Price and Moses Haas, information which as aforesaid had and would come and be known to him the said Edwin S. Holmes, junior, in his said capacity as an officer and employee of the said department and bureau, and this without the said cotton-crop report being first submitted to and officially approved by the said Secretary of Agriculture; it being the design and intention of the said Theodore H. Price, Moses Haas and Edwin S. Holmes, Junior, in so doing to make use of the said information, before the lawful issuance and publication of the said report, for their pecuniary benefit, in speculating in cotton, in view of the probable effect upon the market price of that commodity which the subsequent lawful issuance and publication of the said cotton-crop report would have, and in other ways to the said Grand Jurors unknown.

671 *Overt Acts.*

1. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price and Moses Haas afterwards, to wit, on the said thirty-first day of May, in the year nineteen hundred and five, at the Waldorf-Astoria Hotel, in the said City of New York, unlawfully did meet together to confer concerning the said unlawful conspiracy, combination, confederation and agreement.

2. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said City of New York, in the said southern District of New York, to the City of Washington, in the District of Columbia

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, at the District of Columbia, unlawfully did give the
672 information in this indictment above mentioned, pertaining to the cotton-crop report in this indictment above described, which had on and before that date been acquired by the said department and bureau in the manner hereinabove set forth, to the said Moses Haas, for transmission by him to the said Theodore H. Price

4. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, afterwards, to wit, on the second day of June, in the year nineteen hundred and five, and before the official issuance and publication of the said cotton-crop report, at the District of Columbia, unlawfully did give the information in this indictment above mentioned, pertaining

to the cotton-crop report in this indictment above described, which had on and before that date been acquired by the said department and bureau in the manner hereinabove set forth, to the said Moses Haas, for transmission by him to the said Theodore H. Price.

5. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price afterwards, to wit, on the said second day of June, in the year nineteen hun-
673 dred and five, and before the official issuance and publication of the said cotton-crop report, at and within the said city and southern District of New York, unlawfully did receive from the said Moses Haas the information last above mentioned.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, at the time and place and in manner and form aforesaid, unlawfully did conspire together, and with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

674 *Second Count.*

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in the admini-trative arrangement of the business of the Department of Agriculture of the said United States on and before the fifteenth day of November, in the year nineteen hundred and four, there was, and thence hitherto there has been a bureau designated and known as the Bureau of Statistics; and that during the time and times aforesaid the said Bureau was under the management of an officer and employee of the said United States and of the said Department of Agriculture designated and known as statistician and as chief of the Bureau of Statistics; and that during the time and times aforesaid there were in the said Bureau other officers and employees of the said United States and of the said Department of Agriculture, one of whom was designated and known as associate statistician and another of whom was designated and known as assistant statistician and as assistant chief of the Bureau of Statistics; and that during the time and times aforesaid whenever the said statistician was absent from his said office, the said Bureau was under the management of the said associate statistician, who acted in the place and stead of said statistician as chief of said Bureau.

And that during the time and times aforesaid the said statistician with the aid and assistance of the said
675 associate statistician and of the other officers and employees of the said United States employed in said Bureau, and in the absence of the said statistician, the said associate statistician with the aid and assistance of the other officers and employees aforesaid of said Bureau, was charged with the duty of preparing during certain months in each year certain reports upon the condition of cer-

tain of the crops grown and raised in the United States, which reports became known as and were called crop reports, and that each of said crop reports was by law required to embrace statements of the conditions of the crops therein mentioned by States of the said United States, with such explanations, comparisons and information as might be useful for illustrating the matter contained in said reports, and that each of such reports was required by law to be submitted to and officially approved by the Secretary of Agriculture before being issued or published; that each of said reports was prepared by the said statistician or the said associate statistician in the manner aforesaid, from certain information collected by the said Bureau from divers sources approved by the said Bureau; amongst others being certain correspondents of the said Bureau of Statistics residing in those parts of the United States where were grown the particular crops upon which they furnished information, and who were persons having special knowledge upon the subject, and certain employees of the said Bureau, known as statistical agents,
676 and certain other expert employees of the said Bureau, whose duty it was to travel throughout the United States and ascertain the condition of the said crops; and that during the time and times aforesaid whenever the said statistician or the said associate statistician had as aforesaid prepared any of said reports, he, the said statistician, or the said associate statistician, as the case might be, in accordance with the requirement of law last aforesaid submitted the said report so prepared to the Secretary of Agriculture for the latter's official approval; and that whenever any of said reports was so submitted to said Secretary of Agriculture for his official approval, he, the said Secretary of Agriculture, in the usual course of business in his said Department, and relying upon the proper performance of his duty in the preparation of said report by the said statistician or by the said associate statistician, as the case might be, officially approved the same; and that after such official approval by the said Secretary of Agriculture, thereof, and not until such approval was given, each of said reports was issued and published by the said Department of Agriculture.

And that during the time and times aforesaid, the said crop reports were prepared, approved, and issued and published for the purpose of diffusing the information therein contained among the people of the United States, and that said crop reports were prepared at great expense to the said United States and were to be as nearly
677 fair, impartial, correct and accurate as it was possible for such reports to be; and the said crop reports and each of them upon their issuance and publication after being submitted to and officially approved by the Secretary of Agriculture as aforesaid, did affect to a greater or less extent the market price of the several crops therein mentioned.

That during the time and times aforesaid a custom and practice prevailed in the said Department of Agriculture, established and sanctioned by the said Secretary, under which the giving out to the public of any information collected by the said Bureau of Statistics or its said officers or its said employees to be used in the preparation

of, or to be contained in, any of said crop reports, was prohibited, and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published.

And that during the time and times aforesaid it was the duty of the said statistician and of the said associate statistician and said other officials and employees aforesaid of the said Bureau of Statistics to prepare a true and accurate report upon each of the said crops from the information as to said crops obtained as aforesaid and without regard to the influence which any such report might have upon the market price of the crop therein mentioned.

And that during the time and times aforesaid the said
678 statistician and associate statistician and the other officers and employees aforesaid of the said Bureau of statistics were charged with the duty of honestly and carefully guarding and keeping secret and of not divulging to any person not employed in or connected with said Bureau of statistics any information acquired by him or them in the course of preparing and assisting in preparing the said crop reports and in collecting statistics and compiling statistical matter for use in the preparation of said crop reports, or any of the matter and things and other information which might be contained in any of said crop reports, until said crop reports had been prepared, officially approved, and issued and published as aforesaid, and thereafter said duty of so maintaining secrecy as aforesaid contained save and except as to the matters and things so officially made public in said reports.

And that among the said crop reports so prepared by the said statistician with the aid and assistance of said associate statistician and said other officers and employees of the said Bureau of Statistics, and in the absence of said statistician, so prepared by the said associate statistician with the aid and assistance of said other officers and employees of the said Bureau of Statistics as aforesaid, and so submitted to and officially approved by the said Secretary of Agriculture, and so issued and published by the Department of Agriculture as aforesaid, was a report upon the cotton crop of the United States, which was known as and called the cotton crop report, and which said cotton crop report during the time and times aforesaid
679 was issued and published on or about the third day of each of the months of June, July, August, September, October and December in each year.

That on the sixteenth day of November in the year nineteen hundred and three, and thence continuously until the ninth day of June in the year nineteen hundred and five, one Edwin S. Holmes, junior, held and occupied the office of, and was, such associate statistician in said Bureau of Statistics in the Department of Agriculture, and as such associate statistician the said Edwin S. Holmes, junior, was during the period last aforesaid charged with the duty of aiding and assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician the said Edwin S. Holmes, junior, as such associate statistician, was during the period last aforesaid charged with the

duty of preparing with the aid and assistance of said other officers and employees of said Bureau as aforesaid all of the said crop reports including the said cotton crop reports as aforesaid, and that during the period last aforesaid, in the performance of his duties as said associate statistician in assisting the said statistician in the preparation of said crop reports including said cotton crop reports, and, in the absence of the said statistician, in the performance of his duties in preparing said crop reports, including the said cotton crop reports, he, the said Edwin S. Holmes, junior, did, before
680 the official approval and issuance and publication of each of said crop reports, including the cotton crop reports, acquire and have knowledge of the statistics and statistical matter from which said crop reports, including said cotton crop reports, were prepared and of the matters and things and other information which were to be contained in each of said crop reports including said cotton crop reports.

And that during the period last aforesaid it was the duty of said Edwin S. Holmes, junior, as such associate statistician, whenever he prepared or assisted in preparing any of said reports to prepare and assist in preparing a true and accurate report from the information as to said crops obtained as aforesaid and without regard to the effect which such report might have upon the market price of the crop therein mentioned, and honestly and carefully to guard and keep secret and not to divulge to any person not employed in or connected with said Bureau of Statistics any of the said statistics and statistical matter and information from which said crop reports including said cotton reports were to be prepared, and of the matters and things and other information which were to be contained in any of said crop reports, including said cotton crop reports, knowledge of which was so as aforesaid acquired by him the said Edwin S. Holmes, junior, as such associate statistician, until the said reports had been prepared, officially approved and issued and published as aforesaid, and
681 it was the duty of the said Edwin S. Holmes, junior, as said associate statistician, thereafter honestly and carefully to guard and keep secret and not divulge to any person not employed in or connected with said Bureau any of the statistics and statistical matter and matters and things and other information last aforesaid, knowledge of which was so as aforesaid acquired by him, except such matters and things and other information as were included in and officially made public in said reports.

All and singular of which the premises and several premises in this count aforesaid, in so far as they were then existent, were known to the said Edwin S. Holmes, junior, and to a certain Theodore H. Price and to a certain Moses Haas, at the time of the commission by them of the offense hereinafter set forth.

That on the fifteenth day of November, in the year nineteen hundred and four, and continuously and at all times between said fifteenth day of November, nineteen hundred and four, and the fifth day of July, nineteen hundred and five, and on said day last aforesaid and at the City of New York in the Southern District of New York, the said Edwin S. Holmes, junior, Theodore H. Price and Moses Haas

unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together with certain other persons to the Grand Jurors aforesaid unknown, to defraud the United States in the dishonest and corrupt manner and through and by means of the
682 dishonest and corrupt scheme and arrangement following, that is to say: That in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issuance and publication of each of said cotton crop reports, as hereinbefore set forth, and in advance of the time or times when the matter and information contained in each of said cotton crop reports could lawfully be made public, and to prevent obstruct and impair the due and orderly administration of the business and affairs of said Department of Agriculture, and to the prejudice of the said United States, he, the said Edwin S. Holmes, junior, should and would thereafter in so far as in the power lay, furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which were to be contained in each of said cotton crop reports, knowledge of which was as aforesaid, acquired by the said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

Overt Acts.

1. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful con-
683 spiracy, combination, confederation and agreement, and to effect the object of the same, and at the District of Columbia aforesaid, and on the twentieth day of November, nineteen hundred and four, and on divers other days between the said day last aforesaid and the third day of December, in the same year, the said Edwin S. Holmes, junior, unlawfully and corruptly did communicate to the said Moses Haas statistics and matter and information which were to be contained in the said cotton-crop report to be issued on the day last aforesaid, and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his duties as such associate statistician.

2. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas on the day and days last aforesaid, and at the said City and Southern District of New York, unlawfully and corruptly did communicate to the said Theodore H. Price the information so furnished to him by the said Edwin S. Holmes, junior, as aforesaid.

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price and Moses Haas afterwards, to wit, on the thirty-first day of May, in the year nine-
684 teen hundred and five, in the said City of New York, and in the said Southern District of New York, unlawfully did meet

together to confer concerning the said unlawful conspiracy, combination, confederation and agreement.

4. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said City of New York, in the said Southern District of New York, to the City of Washington, in the District of Columbia.

5. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, and at the District of Columbia aforesaid, unlawfully and corruptly did communicate to the said Moses Haas information which was to be contained in said cotton-crop report to be thereafter issued in said month of June, which information had been acquired by the said Edwin S. Holmes, junior, as aforesaid, in the performance of his official duty.

685 6. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, afterwards, to wit, on the second day of June, in the year nineteen hundred and five, and at the District of Columbia aforesaid and before the official issuance and publication of the said cotton-crop report, last mentioned, unlawfully and corruptly did communicate to the said Moses Haas further information which was to be contained in said last mentioned cotton-crop report and which had been acquired by the said Edwin S. Holmes, junior, in the performance of his said official duty.

7. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price afterwards, to wit, on the said first and second days of June, in the year nineteen hundred and five, and before the official issuance and publication of the said cotton-crop report, at and within the said city and Southern District of New York, unlawfully did receive from the said Moses Haas the information last above mentioned.

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, at the time and place and in manner and form in this count aforesaid, unlawfully did conspire together, and

686 with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Third Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that on the thirty-first day of May, nineteen hundred and five, under the circumstances and conditions in the second count of this indictment set forth and averred pertaining to the organization and existence of the Bureau of Statistics in the Department of Agriculture, and pertaining to the employment of the said officers and employees of the said Bureau and Department in that count mentioned and their duties in regard to the preparation, issuance, publication and character of the crop reports therein mentioned, including the cotton-crop reports, and pertaining to the custom and practice which prevailed in said bureau with reference to the keeping secret of the information collected by said bureau in the preparation of said crop reports, and information to be contained in said reports, and pertaining to the duty which was imposed upon said officers and employees of the said department and bureau therein mentioned of keeping secret and not divulging any of such information, and pertaining to the employment and
687 duties as associate statistician of said Edwin S. Holmes, junior, as therein set forth, and which are now here again alleged to have existed on the day in this count mentioned, at the said City of New York in the said Southern District of New York, the said Edwin S. Holmes, junior, the said Moses Haas and the said Theodore H. Price unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together and with divers other persons to the Grand Jurors aforesaid unknown to defraud the United States in the dishonest and corrupt manner and through and by the means of the dishonest and corrupt scheme and arrangement following, that is to say:

In violation of the duty of him, the said Edwin S. Holmes, junior, to prepare and assist in preparing the said cotton crop reports truly and accurately from the information as to said crops obtained as aforesaid and without regard to the influence of such reports upon the market price of cotton, the said Edwin S. Holmes, junior, in assisting in preparing the said cotton-crop report to be issued in the month of June next following, was to cause and procure the said report to be untrue and inaccurate by causing said report to state that there had been planted in cotton throughout the United States a greater number of acres of land and that the condition of the cotton crop was better than would be shown by such report if it had been based upon the information as to said cotton crop obtained as aforesaid and had been truly and accurately prepared.

688 And in violation of the said duty of him, the said Edwin S. Holmes, junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as associate statistician as aforesaid, and in advance of the official issue and publication of the said cotton-crop report to be published in the month of June then next following, and in advance of the time when the matters and information to be contained in said cotton crop report

could lawfully be made public, and to prevent, obstruct and impair the due and orderly administration of the business and affairs of said department of Agriculture, and to the prejudice of the said United States, he, the said Edwin S. Holmes, junior, was, in so far as in him the power lay, to furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which were to be contained in said report, knowledge of which was as aforesaid acquired by the said Edwin S. Holmes, junior, in the performance of his duty as such associate statistician.

Overt Acts.

1. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the
689 object of the same, the said Theodore H. Price and Moses Haas afterwards, to wit, on the said thirty-first day of May, in the year nineteen hundred and five, at the said City of New York, and in the said Southern District of New York, unlawfully did meet together to confer concerning the said unlawful conspiracy, combination, confederation and agreement.

2. And the Grand Jurors aforesaid, upon their oath, aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect object of the same, the said Moses Haas afterwards, to wit, on the first day of June, in the year nineteen hundred and five, unlawfully did journey from the said City of New York, in the said Southern District of New York, to the City of Washington, in the District of Columbia.

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, afterwards, to wit, on the said first day of June, in the year nineteen hundred and five, and at the District of Columbia aforesaid unlawfully did communicate to the said Moses Haas information which was to be contained in said cotton-crop report to be thereafter issued in said month of June which information had been acquired by said Holmes
as aforesaid in the performance of his said official
690 duty.

4. And the Grand Jurors aforesaid, upon their oath, aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, and at the District of Columbia aforesaid the said Edwin S. Holmes, junior, afterwards, to wit, on the second day of June, in the year nineteen hundred and five, and before the official issuance and publication of the said last mentioned cotton-crop report, unlawfully did communicate to the said Moses Haas further information which was to be contained in said cotton-crop report and which had been acquired by the said Holmes in the performance of his said official duty.

5. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price, afterwards, to wit, on the said first and second days of June, in the year nineteen hundred and five, and before the official issuance and publication of the said cotton-crop report, at and within the said City and Southern District of New York, unlawfully did receive from the said Moses Haas the information last above mentioned.

691 6. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Theodore H. Price, to wit, on the second day of June, in the year nineteen hundred and five, and after the said cotton-crop report had been issued in the said month of June, in the same year nineteen hundred and five, and at the said City and Southern District of New York, did prepare and send to the said Bureau of Statistics a telegram of the tenor following:

"NEW YORK, *June* 2, 1905.

John Hyde, Wash'n, D. C.:

Your report upon cotton acreage just issued reads as follows:

"The bureau report shows a total area planted in cotton up to May 25th to be about 28,120,000 acres a decrease of about 3,610,000 acres or 11.1 per cent. from total acreage planted last year".

Will you kindly telegraph me at my expense immediately whether this means that 28,120,000 acres have actually been planted up to May 25th and that therefore any acreage planted after May 25th, will be an increase upon the number of acres reported as planted in your report of to-day.

THEODORE H. PRICE."

692 7. And the Grand Jurors, aforesaid, upon their oath aforesaid, do further present, that further in pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Edwin S. Holmes, junior, thereafter, and in the said second day of June, in the year nineteen hundred and five, at the City of Washington, District of Columbia, did cause to be prepared and sent to the said Theodore H. Price at the said City of New York a telegram of the tenor following:

"*Statistics.*

WASHINGTON, D. C., *June* 2, 1905.

Theodore H. Price, 82 Beaver Street, New York:

Report indicates about twenty eight million one hundred twenty thousand acres actually planted up to May 25th

HYDE."

And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said Theodore H. Price, Moses Haas and Edwin S. Holmes, junior, at the time and place and in manner and form in this count of this indictment aforesaid, unlawfully did conspire together, and with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

HENRY L. STIMSON,
United States Attorney.

693 (Endorsed:) U. S. Circuit Court. The United States of America, vs. Theodore H. Price, Edwin S. Holmes, Jr., and Moses Haas. Indictment. Conspiracy to defraud the United States. U. S. Rev. stat. Sec. 5440. Henry L. Stimson, U. S. Attorney. A True Bill, John E. Holahan, Foreman. U. S. Circuit Court, Southern District of N. Y., Filed May 29, 1908. John A. Shields, Clerk.

A copy,
JOHN A. SHIELDS, *Clerk.*

694 EXHIBIT 20.

U. S. Circuit Court.

THE UNITED STATES OF AMERICA
vs.
MOSES HAAS.

Bench Warrant.

Henry L. Stimson, U. S. Attorney.

I hereby depute Reed to execute the within writ.
WM. HENKEL,
U. S. Marshall.

May 29, 1908.

June 1, 1908. Def't Haas in court and arraigned.
THOMAS CHATFIELD, *U. S. T.*

Def't discharged on bail to await trial June 1, 1908.
JOHN A. SHIELDS, *U. S. Com.*

Received warrant on the 29th day of May, 1908 at New York City and executed the same by arresting the within named Moses Haas at New York City on the 1st day of June, 1908, and have his body now in court, as within I am commanded.
(S'd) WM. HENKEL,
U. D. Marshall.

695 To the Marshal of the United States for the Southern District of New York, and to his Deputies, or any or either of them.

Whereas, at a Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, begun and held at the Borough of Manhattan, in the City of New York, within and for the District and Circuit aforesaid, on the 2nd Wed. of May in the year of our Lord one thousand nine hundred and eight the Grand Jurors in and for the said District and Circuit, brought into the said Court a true Bill of Indictment against Moses Haas, and another for having, on the 31st day of May, 1905, at the City of Washington, in the District of Columbia, unlawfully promised and offered to give to one Edwin S. Holmes, Jr., a certain share, to wit, a sum equal to one-fourth, of whatever moneys they, the said Moses Haas and Frederick A. Peckham, and the said Lewis A. Van Riper, or either of them should acquire through speculations in cotton based upon information to be furnished by the said Edwin S. Holmes, Jr., to them, which information was to be contained in the cotton-crop report to be issued, in the month of June then next ensuing. All then and there contrary to the form of the Statutes of the United States in such case made and provided, as by said indictment, now remaining on file and of record in the said
696 Court may more fully appear; to which indictment the said Moses Haas has not yet appeared or pleaded.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Moses Haas and him bring before the said Court, at the U. S. Court and Post Office Building, in the City of New York, to answer the Indictment aforesaid.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, the 29th day of May, in the year of our Lord one thousand nine hundred and eight.

JOHN A. SHIELDS, *Clerk.*

HENRY L. BURNETT,
U. S. Attorney.

[U. S. Court Seal, Southern Dist. N. Y.]

697 Ex. 21.

U. S. Circuit Court.

THE UNITED STATES OF AMERICA
vs.
MOSES HAAS.

Recognizance to Appear and Answer After Indictment.

Returnable the 19th of June, 1908.

HENRY L. STIMSON,
U. S. Attorney.

Filed the 1st day of June, 1908.

698 Recognizance to Appear and Answer After Indictment

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this 1st day of June, in the year of our Lord one thousand nine hundred and eight before me, John A. Shields, one of the Commissioners duly appointed by the United States Court of the United States of America, for the Southern District of New York, in the Second Circuit, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the Courts of the United States, pursuant to the provisions of the Acts of Congress in that behalf, personally came Moses Haas, principal, and Martin Engel, surety, and severally acknowledged themselves to owe to the United States, that is to say, the said Moses Haas the sum of Five thousand dollars, the said Martin Engel the sum of Five Thousand dollars, separately to be levied and made of their respective goods and chattels, lands and tenements, to the use of the said United States, if default shall be made in the condition following, to-wit:

Whereas, at the stated term of the Circuit Court of the United States for the Southern District of New York, held on the 29th day of May in the year of our Lord one thousand nine hundred and eight, the Grand Inquest of the United States, within and for the District aforesaid, found a true bill of Indictment against the said Moses Haas and others for having on the 31st day of May, 1905, at & within the Southern District of New York, unlawfully did

699 conspire together, and with others, to defraud the United States and did each do acts to effect the object of the said conspiracy, against the peace and dignity of the United States and contrary to the form of the Statute of the United States in such case made and provided. As by reference to the indictment on file will more fully and at large appear.

And whereas, the said Moses Haas has been brought before the said Circuit Court, to answer the Indictment aforesaid.

And whereas, the said Circuit Court did thereupon order the said

Moses Haas to find sufficient bail, in the sum of Five thousand dollars, for his appearance at the next Circuit Court of the United States of America, for the Southern District of New York, to be holden at the United States Court Building, in the City of New York, on the 19th of June in the year one thousand nine hundred and eight to answer the indictment aforesaid; and that in default of finding such bail the said Moses Haas should stand committed for trial.

Now therefore the condition of this recognizance is such, that if the said Moses Haas shall personally appear at the next Circuit Court of the United States, for the Southern District of New York, to be holden at the United States Court Building, in the City of New York, on the 19th of June in the year of our Lord one thousand nine hundred and eight at — o'clock in the forenoon of that day, and from day to day and from term to term thereafter as directed by said Court, and then and there answer all such matters and things
700 as shall be objected against him, and abide the order of the Court, and not depart the said Court without leave, then this recognizance to be void, otherwise to remain in full force and virtue.

MOSES HAAS. [SEAL.]
MARTIN ENGEL. [SEAL.]

Acknowledged before me the day and year first above written.

JOHN A. SHIELDS,
U. S. Com.

SOUTHERN DISTRICT OF NEW YORK, *ss.:*

Martin Engel of No. 29 East Thirtieth — in the City of New York, being duly sworn, deposes and says that he is worth the sum of Ten Thousand dollars, over and above all his just debts and liabilities.

MARTIN ENGEL.

Sworn to this 1st day of June A. D. 1908, before me.

JOHN A. SHIELDS,
U. S. Com.

701 U. S. Circuit Court.

THE UNITED STATES OF AMERICA
vs.
MOSES HAAS.

Recognizance to Appear and Answer After Indictment.

Returnable the 19th of June, 1908.

HENRY L. STIMSON,
U. S. Attorney.

Filed the 1st day of June, 1908.

702 Recognizance to Appear and Answer After Indictment.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this 1st day of June in the year of our Lord one thousand nine hundred and eight, before me, John A. Shields, one of the Commissioners duly appointed by the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the Courts of the United States, pursuant to the provisions of the Acts of Congress in that behalf, personally came Moses Haas, principal, and Martin Engel, Surety, and severally acknowledged themselves to owe to the United States, that is to say, the said Moses Haas the sum of Two thousand dollars, the said Martin Engel the sum of Five thousand dollars, and the said —— the sum of —— dollars, separately to be levied and made of their respective goods and chattels, lands and tenements, to the use of the said United States, if default shall be made in the condition following, to wit:

Whereas, at the stated term of the Circuit Court of the United States for the Southern District of New York, held on the 29th of May in the year of our Lord one thousand nine hundred and eight the Grand Inquest of the United States, within and for the District aforesaid, found a true bill of Indictment against the said Moses Haas and others for having on the 2nd day of June, 1905,
703 at the Southern District of New York, unlawfully conspired together and with others, to defraud the United States, and did each do acts to effect the object of the said conspiracy, against the peace and dignity of the United States and contrary to the form of the Statute of the United States in such case made & provided.

As by reference to the indictment on file will more fully and at large appear.

And whereas, the said Moses Haas has been brought before the said Circuit Court, to answer the Indictment aforesaid.

And whereas, the said Circuit Court did thereupon order the said Moses Haas to find sufficient bail, in the sum of Five thousand dollars, for his appearance at the next Circuit Court of the United States of America, for the Southern District of New York to be holden at the United States Court Building, in the City of New York, on the 19th of June, in the year one thousand nine hundred and eight to answer the indictment aforesaid; and that in default of finding such bail the said Moses Haas should stand committed for trial.

Now therefore the condition of this recognizance is such, that if the said Moses Haas shall personally appear at the next Circuit Court of the United States of America, for the Southern District of New York, to be holden at the United States Court Building, in the City of New York, on the 19th of June in the year of our
704 Lord one thousand nine hundred and eight at — o'clock in the forenoon of that day, and from day to day and from term to term thereafter as ordered by said court, and then and there answer all such matters and things as shall be objected against *him*, and abide the order of the Court, and not depart the said Court without leave, then this recognizance to be void, otherwise to remain in full force and virtue.

MOSES HAAS. [SEAL.]
MARTIN ENGEL. [SEAL.]

Acknowledged before me the day and year first above written.

JOHN A. SHIELDS,
U. S. Com.

SOUTHERN DISTRICT OF NEW YORK, *ss.*:

Martin Engel of No. 29 East Thirtieth — in the City of New York, being duly sworn, depose and says that he is worth the sum of Ten Thousand dollars, over and above all his just debts and liabilities.

MARTIN ENGEL.

Sworn to this 1st day of June, A. D. 1908, before me.

JOHN A. SHIELDS,
U. S. Com.

705 Approved.
J. H. DOBR,
Ass't U. S. Att'y.

THE UNITED STATES
vs.
FREDERICK A. PECKHAM.

THE UNITED STATES OF AMERICA,
Southern District of New York, ss.:

Martin Engel, being duly sworn, says that he resides at # 29 East Third St., Borough of Manhattan, City of New York; that he desires to offer himself as surety for the appearance of the above named Frederick A. Peckham in accordance with the provisions of the bond hereto annexed, and makes this affidavit for the purpose

of securing his acceptance as such surety. That he is the owner in fee simple of certain lots, pieces or parcels of land situated in the Borough of Manhattan, City of New York, and known as Northwest Corner of Thompson and Grand Sts.; that the numbers of said lots are 26, 28, 30 and 32 Grand St., and 28 and 30 Thompson St., & that he purchased said property in the year 1907; that the purchase price was the sum of $250,000.00; that the present value of said property is $250,000.00, and that a mortgage of $168,000 is outstanding on said premises, and that there are no other liens or encumbrances on said premises; that there are no judgments against him in the Courts of this State or elsewhere; that he is on no other bond except a bond in the sum of $10,000.00 given for the appearance of H. Field before Comr. John A. Shields, and a bond
706 in the sum of $5,000.00 given for the appearance of one Rothschild; that he is worth the sum of $200,000 over and above his just debts.

MARTIN ENGEL.

Sworn to before me this 1st day of June, 1908.

JOHN A. SHIELDS,
United States Commissioner for the Southern District of New York.

707 Ex. 25.

United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
EDWIN S. HOLMES, JR., MOSES HAAS, and FREDERICK A. PECKHAM.

Demurrer.

Nash Rockwood, Attorney for Defts. Moses Haas, and Frederick A. Peckham.
Office and Post Office Address, 378 Broadway, Saratoga Springs, N. Y.

Copy rec'd June 19/08.

HENRY L. STIMSON,
U. S. Att'y.

708 United States Circuit Court for the Southern District of New York.

UNITED STATES
vs.
EDWIN S. HOLMES, JR., MOSES HAAS, and FREDERICK A. PECKHAM.

The defendants, Moses Haas and Frederick A. Peckham, above named, hereby do, and each of them does, demur to the indictment

presented by the last Grand Jury, filed May 29, 1908, charging them with the crime of conspiracy to defraud the United States, upon the following grounds:

First. That the acts charged in said indictment do not constitute a crime.

Second. That the acts charged in said indictment do not constitute the crime charged.

Third. That there are no facts alleged showing that the United States was defrauded by any wrongful acts of defendants.

709 Fourth. That sufficient facts are not shown to establish the charge of conspiracy, in that the act concerning which defendants are charged to have conspired is not a criminal offense known to the law.

Fifth. That the facts constituting the alleged crime are not stated with certainty as required by law.

Wherefore, the defendants ask judgment that they and each of them be dismissed and discharged from the premises specified in said indictment.

Dated June 18, 1908.

NASH ROCKWOOD,
Attorney for Defendants Moses Haas and Frederick A. Peckham.

Office and Post Office Address: 378 Broadway, Saratoga Springs, N. Y.

710 Ex. 24.

United States District Court, Southern District of New York.

UNITED STATES
vs.
THEODORE H. PRICE and MOSES HAAS.

Demurrer.

Nash Rockwood, Attorney for Deft. Moses Haas.
Office and P. O. Address, 378 Broadway, Saratoga Springs, N. Y.

Copy rec'd June 19 '08.

HENRY L. STIMSON,
U. S. Att'y.

711 United States Circuit Court for the Southern District of New York.

UNITED STATES
vs.
THEODORE H. PRICE and MOSES HAAS.

The defendant, Moses Haas, above named, hereby demurs to the indictment presented by the last Grand Jury, filed May 29, 1908,

charging him with the crime of conspiracy to commit an offense against the United States, and to the several counts contained in said indictment, upon the following grounds:

First. That the acts charged in said indictment do not constitute a crime.

Second. That the acts concerning which defendants are alleged to have conspired do not constitute a criminal offense, and are not acts criminal in their nature. That the acts charged are not prohibited or declared criminal by law.

Third. That the indictment does not charge the commission of any crime known to the law.

Fourth. That the indictment charges the violation of a rule
712 of a department of the Government but not the violation of any law.

Fifth. That the indictment charges the commission of more than one alleged offense in several different counts and it does not appear that the facts set up in each count refer to the same transaction.

Sixth. That the facts constituting the crime charged are not set forth with certainty as required by law.

Wherefore, the defendant asks judgment that he be dismissed and discharged from the premises specified in said indictment.

Dated, June 18, 1908.

NASH ROCKWOOD,
Attorney for Defendant Moses Haas.

Office and Post Office Address, 378 Broadway, Saratoga Springs, N. Y.

713 EX. 23.

United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
THEODORE H. PRICE, EDWIN S. HOLMES, JR., and MOSES HAAS.

Demurrer.

Nash Rockwood, Attorney for Deft Moses Haas.
Office and Post Office Address 378 Broadway, Saratoga Springs, N. Y.

Copy Rec'd June 19 08.

HENRY L. STIMSON,
U. S. Atty.

714 United States Circuit Court for the Southern District of New York.

UNITED STATES
vs.
THEODORE H. PRICE, EDWIN S. HOLMES, JR., and MOSES HAAS.

The defendant Moses Haas, above named, hereby demurs to the indictment presented by the last Grand Jury, filed May 29, 1908, charging him with the crime of conspiracy to defraud the United States, and to the several counts contained in said indictment, upon the following grounds:

First. That the acts charged in said indictment do not constitute a crime.

Second. That the acts concerning which defendants are alleged to have conspired do not constitute a criminal offense, and are not acts criminal in their nature. That the acts charged are not prohibited or declared criminal by law.

Third. That the indictment does not charge the commission of any crime known to the law.

Fourth. That the indictment charges the violation of a rule of a department of the Government but not the violation of any law.

Fifth. That the indictment charges the commission of more than one alleged offense in several different counts and it does not
715 appear that the facts set up in each count refer to the same transaction.

Sixth. That the facts constituting the crime charged are not set forth with certainty as required by law.

Wherefore, the defendant asks judgment that he be dismissed and discharged from the premises specified in said indictment.

Dated, June 18, 1908.

NASH ROCKWOOD,
Attorney for Defendant Moses Haas.

Office and Post Office Address: 378 Broadway, Saratoga Springs, N. Y.

716 **Ex. 26.**

United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

Demurrer.

Nash Rockwood, Attorney for Defendants.
Office and Post Office Address: 378 Broadway, Saratoga Springs, N. Y.

Copy Rec'd June 19 '08.

HENRY L. STIMSON,
U. S. Att'y.

717 United States Circuit Court for the Southern District of New York.

UNITED STATES
vs.
MOSES HAAS and FREDERICK A. PECKHAM.

The defendants Moses Haas and Frederick A. Peckham, above named, hereby do, and each of them does, demur to the indictment presented by the last Grand Jury, filed May 29, 1908, charging them with the crime of conspiracy to commit an offense against the United States, on the following grounds:

First. That the acts charged in said indictment do not constitute a crime.

Second. That the acts charged in the indictment do not constitute the crime charged and that no crime known to the law is in fact charged.

Third. That the acts concerning which defendants are alleged to have conspired do not constitute a criminal offense, and there is no allegation that any crime was committed.

Fourth. That the facts constituting the alleged crime are
718 not set forth with certainty as required by law.

Fifth. That the act concerning which defendants are charged with having conspired does not constitute a violation of law but merely a violation of the rule of a department.

Wherefore, the defendants ask judgment that they and each of them be dismissed and discharged from the premises specified in said indictment.

Dated, June 18, 1908.

NASH ROCKWOOD,
Attorney for Defendants Moses Haas and Frederick A. Peckham.

Office and Post Office Address: 378 Broadway, Saratoga Springs, N. Y.

719 Ex. 27.

Circuit Court of the United States for the Southern District of New York.

THE UNITED STATES OF AMERICA
against
MOSES HAAS, Impleaded and Indicted with THEODORE H. PRICE, Edwin S. Holmes, Jr., and Frederick A. Peckha- (Four Indictments).

Affidavit of Moses Haas on Motion to Quash.

720 Circuit Court of the United States for the Southern District of New York, May Term, 1908.

THE UNITED STATES OF AMERICA
against
MOSES HAAS, Impleaded and Indicted with THEODORE H. PRICE, Edwin S. Holmes, Jr., and Frederick A. Peckham (Four Indictments).

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Moses Haas, being duly sworn deposes and says as follows:

I am one of the defendants named in four indictments recently returned by the Grand Jury to the United States Circuit Court in and for the Southern District of New York, in and by which indictment I was indicted for alleged conspiracy under section 5440 of the revised statutes of the United States, and for alleged bribery.

When the Federal Grand Jury which returned said four indictments was in session, I was served with a subpœna to attend before the said Grand Jury and thereupon I attended before said body at
721 its session, held in the Post Office Building, in the City, County and State of New York, in the month of May, 1908. The exact date of my attendance, I cannot now recall, but the same can be ascertained and furnished. I delivered up the subpœna which was served upon me, when I received my pay as a witness. On the 19th day of June, 1908, I attended before Judge Hough of the United States Court, on a motion made by Theodore H. Price to set aside the indictment against him, and at said time and place, a copy of the subpœna served upon said Price to attend before the said Grand Jury was shown to me. With the exception of the dates, my recollection is, that the subpœna so served upon me was identical with the one served upon said Price, and required me to attend and testify "in a certain cause now pending and undetermined in the said court between the United States of America and —— —— on the part of the said United States." After seeing the copy of subpœna so served upon said Price, my recollection is, that the subpœna served

upon me omitting the dates of which I am not certain was in words and figures as follows, to wit:

"U. S. Grand Jury.

"By virtue of a writ of subpœna. To you directed and herewith "shown, you are commanded and firmly enjoined, that, laying all "other matters aside, and notwithstanding any excuse, you be and "appear in your proper person, before the Grand Inquest of the "body of the people of the United States of America, for the South- "ern District of New York, at a Circuit Court, to be held at the U. S. "Court, and Post Office Building, Room 119, 4th Floor, in the City "of New York, in and for the said Southern District, on the — "day of May, 1908, at 10:30 o'clock in the fore*noon* of the same day, "to testify all and everything which you may know in a certain "cause now depending and undetermined in the said Court between "the United States of America and —— —— on the part of the said "United States. And this you are not to omit under the penalty of "two hundred and fifty dollars.

"Dated this — day of May, 1908.

722 By the Court.

HENRY L. STIMSON,
U. S. Attorney.

To Moses Haas, 112 W. 47th St. N. Y. City.

When I was called before the said Grand Jury, I was first sworn by the Foreman thereof to tell the truth, the whole truth and nothing but the truth. I was then asked my name, which I stated to be Moses Haas.

I was then asked my place of residence, which I stated to be Number 112 West 47th Street, in the City, County and State of New York.

I was then asked my business, and I stated in substance that I had no regular business.

I was then asked if I knew Theodore H. Price. I then asked the Foreman of the Grand Jury if I could make an inquiry before answering said question, and said Foreman told me that I could do so. Whereupon I told the said foreman in the presence of the said Grand Jury, that a subpœna to attend had been served upon me requiring me to testify in a certain cause depending and undetermined in the said Court between the United States of America and the person or persons whose names did not appear in the subpœna which had been served upon me. I exhibited said subpœna to said Foreman and called his attention to the fact that the space where the name of the defendant would ordinarily be written in was left blank, and I asked to be informed as to the nature of the proceeding which was then pending before the said Grand

723 Jury. Mr. Adkins, who was assisting as a Special Attorney of the United States before the said Grand Jury, thereupon stated to me in substance, that the Grand Jury was investigating crimes alleged to have been committed in connection with what was known as the "Cotton Leak" case. I then immediately told Mr. Adkins in the presence and hearing of said Grand Jury that I was a defendant in previous indictments found in the United States Court

in the District of Columbia, which were then pending against me for the same matter, and that I have been previously brought before the United States Commissioner and a United States Judge of the Southern District of New York, charged with the crime of conspiracy in connection with the said "Cotton Leak" case, and have been twice discharged therefrom. I then asked him if the indictments previously found against me in the District of Columbia in connection with the said "Cotton Leak" case, were still pending, to which he replied that they were pending. I then said in substance, "how can I testify if I am a direct defendant in the other indictment and they are still pending against me?" To which Mr. Adkins replied in substance, that that was al-right, and that it was my privilege to refuse to answer if I so decided. I then said in substance, "Am I not then in the light of a defendant in this proceeding?" To which Mr. Adkins replied "you are." I then told Mr. Adkins in the presence of the said Grand Jury, that I would avail myself of said privilege, not to testify, notwithstanding which fact Mr. Adkins then asked me further questions. To each of which, I claimed my constitutional privilege of immunity as a witness, on account of the previous in-
721 dictments then pending against me. In answer to each question so put to me, I stated the grounds of my refusal to answer in substance saying that such answers might tend to accuse me of the commission of a crime by incriminating me. All of the proceedings above stated were had in the presence of the said Grand Jury at its regular session as aforesaid.

After several such questions had been put to me, and I had refused to answer the same, there was a conference between the officials of the Government in charge of said matter, before the Grand Jury, at the conclusion of which, I was directed to appear on the following morning, which I did, but was not sworn nor brought before said Grand Jury. I was again told to reappear the following morning, which I did, but was not sworn, and was finally excused.

On the day following, four indictments were handed down by said Grand Jury against me in substance, charging me with conspiracy to defraud the United States under Section 5440 of the Revised Statutes of the United States, and with having committed the crime of bribery. Such indictments were returned by said Grand Jury before which I had appeared under subpoena as said witness. I did not appear before said Grand Jury at my request, nor was any statement made to me in advance of my attendance as to the nature of the proceeding pending before said Grand Jury.

Among the questions put to me, and which I refused to answer, was one in substance, asking me if I knew Theodore H. P. Price, and on the day said indictments were returned, said Price was jointly indicted with me for such alleged crime of conspiracy
725 to defraud the United States and for conspiracy to commit an offense against the United States.

I claim that in calling me before said Grand Jury, and requiring me to be sworn as a witness, and compelling me to assert my privilege and claim the Constitutional immunity granted to me by the Constitution of the United States in a proceeding which was then pend-

ing before the said Grand Jury directed against me in connection with others, that my Constitutional right not to be made a witness against myself, except at my own request, was invaded, jeopardized and violated, and that such Constitutional immunity given to me by law was transgressed; that I was thereby put in a position before the said Grand Jury, which was at said time, investigating a crime alleged to have been committed by me with others, where I was compelled to plead my privilege, or else to become a witness against myself, thereby violating the Constitutional immunity granted to me by the Constitution of the United States, for all of which reasons, I urge, that the said four indictments, so returned against me, were illegally found, and that all of the same should be set aside and dismissed.

All of the statements made herein by me, concerning questions put to me before the said Grand Jury, and conversations had with the said Adkins, are intended to give the substance of said conversation, rather than the exact words of what occurred.

On the argument this day before said Judge Hough hereinbefore referred to, there was produced in open court and read, a
726 letter appointing said Jesse C. Adkins, a Special assistant, to the Attorney General, for the purpose of conducting criminal proceedings against myself in connection with Theodore H. Price, and others. And it was admitted upon said argument in open court that said Adkins was proceeding before said Grand Jury which returned said indictments against me in accordance with said appointment.

No previous or other application has been made for the order of dismissal of said indictments asked hereon.

(Sd.) MOSES HAAS.

Subscribed and sworn to before me this 19th day of June, 1908.

(Sd.) FREDERICK L. CAMPBELL.

[L. S.] *Notary Public, New York County.*

Notary Public Kings Co.

Cert. Filed in N. Y. Co.

727 United States Circuit Court, Southern District of New York.

No. 307.

THE UNITED STATES OF AMERICA
v.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and FREDERICK A. PECKHAM.

Conspiracy to Defraud the U. S.

No. 308.

THE UNITED STATES OF AMERICA
v.
THEODORE H. PRICE, Impleaded with EDWIN S. HOLMES, JR., and MOSES HAAS.

Conspiracy to Defraud the U. S.

No. 309.

THE UNITED STATES OF AMERICA
v.
MOSES HAAS, Impleaded with THEODORE H. PRICE and EDWIN S. HOLMES, JR.

Conspiracy to Commit an Offense Against the U. S.

No. 310.

THE UNITED STATES OF AMERICA
v.
MOSES HAAS, Impleaded with FREDERICK A. PECKHAM.

Conspiracy to Commit an Offense Against the U. S.

728 SOUTHERN DISTRICT OF NEW YORK, *ss.*:

Jesse C. Adkins, being duly sworn, deposes and says: I am Special Assistant to the United States Attorney *for* the Southern District of New York. During the May 1908 Term of the Circuit Court, the grand jury for the Southern District of New York was engaged in a general investigation into the so-called cotton leak matter, with a view to ascertaining whether or not crime had been committed by the falsification of Government cotton reports, by the giving out of advance information as to such reports, and by the bribing of Government officers. This inquiry had not been preceded by any complaint or hearing before a committing magistrate, nor had any person held for the action of the grand jury, nor was the investigation based on or accompanied by any complaint, accusation or proposed bill of indictment.

A large number of witnesses residing in this City and elsewhere, were summoned before the grand jury. As a result of this investigation four indictments were returned, but the grand jury did not confine its scrutiny to the conduct of those persons whom it subsequently indicted. The names of such other persons it is not material to state.

While this investigation into the cotton leak matter was in progress, I was in communication with Moses Haas, through Post Office Inspector Walter S. Mayer. I was informed that Haas had information which implicated certain persons in the matter then
729 under investigation before the grand jury. This information, as it was conveyed to me, appeared to be essential to enable the grand jury to make a complete investigation of the case. Haas, as I was informed, expressed himself as willing to give this information to the grand jury, but wished the assurance that he might receive immunity, should his testimony tend to show him guilty of any offense. Subsequently, on Monday, the 25th of May, I was told that Haas had been advised by his counsel that he had nothing to fear from an investigation and that he had no further communication to make to the Government officers.

Thereupon, it being considered that the grand jury should, if possible, have the benefit of the testimony of Haas, in the matter, a subpœna was issued requiring his attendance before that body on Tuesday the 26th of May. This subpœna is in the form set forth in defendant's affidavit.

The witness appeared before the grand jury on Tuesday morning in answer to the subpœna.

The statement made by Haas in his affidavit as to what transpired while he was before the grand jury is incorrect in several important particulars. The questions put to Haas and the answers given were stenographically reported by a clerk of the United States Attorney present during said examination and his notes have been re-
730 duced to typewriting; I have read this transcript and I know that it states accurately what transpired in the grand jury room; and because of the inaccuracies in said Haas' affidavit, leave is asked to file herewith and as a part hereof said transcript together with the affidavit of the clerk as to its accuracy.

The summoning of Haas before the grand jury was an effort made in good faith to secure vital information as to the subject matter of the general inquiry then being pursued by that body, and was not in any way for the purpose of prejudicing said Haas before the grand jury.

Subscribed and sworn to before me this — day of August, 1908.

——— ———.

731 At a Stated Term of the United States Circuit Court held in and for the Southern District of New York, at the United States Court and Post Office Building, Borough of Manhattan, City of New York, Southern District of New York, on the 1st day of October, 1908.

Present: Hon. Charles M. Hough, United States District Judge holding Circuit Court.

No. 307.

UNITED STATES
vs.
EDWIN S. HOLMES, JR., Impleaded with MOSES HAAS and FREDERICK A. PECKHAM.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 308.

UNITED STATES
vs.
THEODORE H. PRICE, Impleaded with EDWIN S. HOLMES, JR., and MOSES HAAS.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 309.

UNITED STATES
vs.
THEODORE H. PRICE, Impleaded with MOSES HAAS.

Conspiracy to Commit an Offense against the United States, R. S., Sections 5440 and 5451.

No. 310.

UNITED STATES
vs.
MOSES HAAS, Impleaded with FREDERICK A. PECKHAM.

Conspiracy to Commit an Offense against the United States, R. S., Sections 5440 and 5451.

732 Moses Haas, one of the defendants above named, having on June 18th, 1908, withdrawn his plea of "Not Guilty" theretofore entered to each of the above entitled indictments, and having filed a demurrer, herein to each of the said indictments, and also having moved on said day to quash each of said indictments, and to inspect the minutes of the grand jury which found said indictments on said demurrers, and said motions having duly come on to be heard at a Term of the United States Circuit Court held in and for the Southern District of New York on August 7, 1908, and after hearing Nash Rockwood, Esq., attorney for Moses Haas in

support of said demurrers and said motions, and Henry L. Stimson, Esq., United States Attorney, in opposition thereto and after reading and filing the notice of motion and the affidavit of said Moses Haas in support of said demurrers and said motions, and after reading and filing the affidavit of Jesse C. Adkins in opposition to said motions and due deliberation having been had,

Now, on motion of Henry L. Stimson, United States Attorney, it is,

Ordered that said motions to inspect the minutes of the Grand Jury be and the same hereby are denied, and it is Further Ordered that said motions to quash said indictments be and the same hereby are denied, and it is

Further ordered and adjudged that said demurrers to each of said indictments be and the same hereby are in all respects overruled, and it is

733 Further ordered that the above named defendant Moses Haas appear and plead to said indictments at a Term of the United States Circuit Court for the Southern District of New York to be held at the United States Court and Post Office Building, in said District, at 11 A. M. on October 12, 1908.

(S'g'd) C. M. HOUGH,
U. S. District Judge, Holding Circuit Court.

734 EX. 29.

United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
THEO. H. PRICE et al.

UNITED STATES
vs.
MOSES HAAS et al.

Opinion of Hough, D. J., on Motion to Quash.

735 Opinion of Hough, D. J., on Motion to Quash.

United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
THEO. H. PRICE et al.

UNITED STATES
vs.
MOSES HAAS et al.

On Motions by Defendants Price and Haas to Quash Indictments.

On or about April 30th, 1908, Jesse C. Adkins, Esq., was duly appointed by the Attorney General of the United States to be a

Special Assistant to the United States Attorney for this District. In the language of the letter of designation such appointment was "to aid in the investigation of the 'cotton leak matter,' with a view of obtaining indictments,—if the evidence warrants, against Moses Haas, Theodore H. Price and others."

The "Matter" referred to attracted public attention as long ago as 1905, and was in substance *a* that Haas, Price and others
736 interested in speculative purchases and sales of cotton, had obtained through one Holmes, an "assistant Statistician" in the Department of Agriculture early if not secret information regarding the planting of cotton and the condition of the growing crop, which information might be useful to them in dealing with persons not so well informed.

The May Grand Jury for this District being in session, it was attended by Mr. Adkins as well as by the District U. S. Attorney and his regular assistants,—and by their suggestion the jurors began an investigation into said "matter."

At the time of the occurrence giving rise to these motions, no indictment had been found growing out of "Cotton Leak" transactions, no complaint or information had been filed, nor had any person been arrested or held for examination by reason thereof.

It appears by affidavit, that counsel for the United States or some of them, were informed that Price desired to make a statement to them, and that Haas was willing to give testimony, if himself guaranteed immunity from prosecution. Later, however, said counsel were advised that Haas had concluded not to testify, and that Price would make no statement to the Grand Jury.

Before Price had definitely made this statement, a subpœna directed to him and requiring attendance before the Grand Jury was issued, but not legally served. He, however, became fully aware of its existence and tenor.

737 After Haas' change of mind became known to the United States Attorneys, a similar subpœna was duly served upon him. Both these subpœnas were in usual form, and required the attendance of Price and Haas respectively to testify "all and everything you may know in a certain cause now pending and undetermined in (this) court between the United States and —— —— on the part of the United States."

Haas appeared in obedience to the subpœna, and Price after learning through counsel, that if he did not come, despite the informality of service, he would ultimately be compelled so to do,—also attended in the Grand Jury room.

Both were duly and fully informed of their constitutional rights, and that the jurors were investigating the "Cotton leak." Both protested against being sworn, each was asked whether he knew the other, and both refused to answer on constitutional grounds.

A few other wholly unimportant questions were asked, privilege claimed as to each; and the episode then closed without either of the moving parties having uttered any words which could be regarded as evidence against anybody.

Thereafter these indictments (based on alleged "Cotton leak"

wrongdoing) were found against both Price and Haas, and by the same Grand Jury before which they had appeared.

738 Both now move to quash said indictments on the ground that the proceedings above outlined constitute an invasion of rights guaranteed by the 5th Amendment to the Constitution, in that compelling the attendance of persons ultimately indicted, and swearing them as witnesses makes them witnesses against themselves,—even though by prompt claim of privilege, no words of the slightest evidential value are uttered. Defendants' claim may be thus fairly stated:—It is a breach of constitutional privilege to compel the possible defendant in a criminal case to elect before any Grand Jury having power to indict him, whether or not to claim said privilege.

Nicoll, Anable, Lindsay & Fuller for Price.

Nash Rockwood for Haas.

Henry L. Stimson, U. S. Attorney, and Jesse C. Adkins, Goldthwaite H. Dorr and Charles A. Roberts for the United States.

Hough, *D. J.* (after making foregoing statement):

A part of the argument addressed to the Court, appeared to assert that Price and Haas had been oppressed by the agents or attorneys of the United States. Let it be assumed that discretionary power rests in the Court to quash an indictment found by coercion or oppression of jurors or witnesses or by device or trick inconsistent with the fair and honorable administration of law, yet there is nothing even in defendants' affidavits giving color to a suggestion of such conduct in this proceeding. What was done, was all in the open, with every opportunity for defendants to consult counsel, and not

739 one of the formal questions put (the examination never got further) was even asked before full and fair knowledge of his legal privilege had been given each of the present defendants, and by one or several representatives of the United States.

This conclusion is reached without reading the minutes of the Grand Jury:—a means of information doubtless legal, but in my opinion not to be resorted to if recourse can be avoided;—because the grand inquest is not only a supremely important but wholly independent part of our legal system, and prying into its records directly tends to subordinate that jury to the Court, and to increase technicality of procedure,—two results equally to be deplored.

The real and only questions raised by these motions, are narrow but important matters of law, i. *e.*, Were these defendants by the transactions above stated (1) compelled to be witnesses against themselves (2) in a criminal case?

(To avoid side issues it will be assumed (but not decided) that Price attended the Grand Jury under compulsion.)

The second of the queries states requires consideration of the nature of a grand jury proceeding before indictment found. Defendants assert that by a necessary legal fiction, the indictment is drawn and is physically in existence before the Grand Jury convenes; that it is then with supporting evidence laid before the jurors who

thereupon find or ignore it. It follows that the "Criminal Case" begins with the naming of a defendant in the unfound indictment, and theoretically antedated the grand jury itself. It follows also that the person named in such indictment is as much on trial
740 (though in a different way) when before the Grand Jury as he is after due arraignment before a petit jury.

This view is thought to find support in People vs. Kelley, 24 N. Y. and People vs. Sheriff, 11 N. Y. Pro. 182. I do not however find it necessary to consider whether this narrow and technical statement of Grand Jury proceeding is justified by New York or other state decisions. The true doctrine is I believe established by national courts of controlling authority and is that the submission of an indictment to a grand jury and the examination of witnesses before them in relation to the same, are "no part of criminal proceedings against the accused, but are merely to assist the Grand Jury in determining whether such proceedings shall be commenced."

Post vs. U. S., 161 U. S. 583.

U. S. vs. Reed, 2 Blatch. 435.

It must therefore be held that Price and Haas were not on trial before the Grand Jury, were not *parties* to any proceeding then and there in progress, and must rest their claim of privilege or immunity, upon the rights of a witness and not those of a party.

The constitutional provision is but the affirmance of the common law maxim nemo tenetur seepsani accusare, it cannot be understood without knowledge of the common law rule, and is to be interpreted thereby. It is intended solely to prevent disclosures by persons acting as witnesses in any investigation, and has no
741 logical or historical relation to the rights of parties as such.

Counselman vs. Hitchcock, 142 U. S. at p. 574.

Kepner vs. U. S. 195 U. S. 100.

U. S. vs. Wong Kim Ark, 193 U. S. 649.

Brown vs. Walker, 70 Fed. Rep. at p. 48.

Story on the Constitution, Sec. 1288.

The immunity of a party in a criminal case rests likewise upon a rule of the common law, long antedating the Constitution, and quite different from the rule regarding self accusation; viz: the exclusion from the witness stand of all parties to the record, because their interest was deemed so great as to render them unworthy of belief.

Benson vs. U. S. 146 U. S. 335. This rule was not changed by the Constitution and existed in full force in most English speaking Courts until almost within the memory of men still living. For the Federal Courts, the practice is now regulated by the Act of March 16, 1878 (20 Stat. 30) declaring that in all proceedings against persons "charged with the commission of crimes" the person charged shall be a witness "at his own request but not otherwise."

Thus I think the defect of defendants' argument is shown by authorities controlling in Courts whose prime duty it is to authorita-

tively expound the National Constitution, Price & Haas were not parties, but as witnesses claim a parties' statutory (not constitutional) privilege.

742 Regarding these men as witnesses only, it is settled law that no right either constitutional or statutory was infringed by compelling their attendance and administering the oath.

U. S. vs. Kimball, 117 F. R. 156,
followed in U. S. vs. Greene & Doremus, Sup. Ct. Dist. Colum. (unreported) where a lengthy series of vital questions to each of which privilege was pleaded,—was permitted on motions like the present. And the reason for this is that the constitutional privilege is personal to the witness, must be claimed by him, may be passed on by the Court, and the claimant only becomes a witness by being duly sworn or affirmed as such.

People vs. Lauder, 82 Mich. 109.
State v. Corner, 157 Ind. 611.
State v. Duncan, 78 Vt. 364.

The Constitutional provision is therefore, as said by Professor Wigmore in his illuminating discussion of the subject "an option of refusal and not a prohibition of enquiry."

Wigmore *in* evidence Sec. 2268 and when these defendants were duly and legally summoned to enquiry and put to their option no right was violated; and the suggestion that they severally appeared in an unfavorable light while claiming privilege before the men who could indict them, is especially immaterial in a country where "there is more danger that criminals will escape justice than that they will be subjected to tyranny."

Kepner vs. U. S. supra p. 134.

It is quite true that the constitutional view, which by confounding the privilege of a witness with the rights of a party, (or
743 to speak more accurately the exclusion of a party) makes of a subject a person sacrosanct, has received much judicial approval. The extent and nature thereof is reviewed in People v. Gillette (App. Div. Sup. Ct. N. Y.—N. Y. Law Journal, June 18, 1908) and from the reasoning of that case I respectfully dissent.

Some aid for defendants' contention is thought to be found in such cases as Stokes v. State, 5 Bax. (Tenn.) 619 where the Constitution was held infringed by asking defendant to make a foot track before the jury. The numerous cases on demonstrative evidence are I think beside the question before the Court, but it may be said that I think the better view is set forth in the recent case of Magee v. State (Sup. Ct. Miss.) 46 So. 529. See also Wigmore *in* Evidence Sec. 2265.

Motion denied.

August 28th, 1908.

C. M. HOUGH, *D. J.*

744 Ex. 28.

United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
MOSES HAAS et al.

Opinion of Hough, D. J., on Demurrers.

745 Opinion of Hough, D. J., on Demurrers.

United States Circuit Court, Southern District of New York.

No. 307, No. 308, No. 309, No. 310.

UNITED STATES
vs.
MOSES HAAS et al.

On Demurrer by Haas to Four Indictments Found against Him Jointly with Others Not Joining in These Demurrers.

Nash Rockwood for Haas.
H. L. Stimson, U. S. Att'y.
J. C. Adkins, G. H. Dorr and C. A. Roberts, for the United States.

HOUGH, *D. J.*:

At the times in the indictments mentioned one Holmes was an employee of the United States, acting as assistant statistician in the Department of Agriculture. His duties were to consider and tabulate (or assist in so doing) the reports in cotton planting, and cotton crop conditions furnished to the department by its local reports; and thus prepare (or assist in preparing) the reports on cotton furnished to the public under governmental authority.

Such or similar reports on agricultural conditions have been furnished by the proper department ever since the establish-
746 ment of the Department of the Interior. They were in general terms authorized by the Statute (May 15, 1862) establishing that department.

This function of the Interior Department passed to the then created Department of Agriculture in 1892, and both before and since that date Congress has specifically appropriated money for the collection and publication of crop reports. By 27 Stat. 76, it is declared that monthly crop reports must be submitted to the Secretary of Agriculture "who shall officially approve the report before it is issued or published."

During all the time referred to in the indictments it was the written and published rule or regulation of the Agricultural Department (of which judicial notice is taken) that no crop information should

be published or divulged by any subordinate without the written approval of a Bureau Chief,—which Holmes was not.

For the purposes of these demurrers, the substance of the indictments may be thus stated:—it is alleged that Haas, et al., agreed with each other and with Holmes that the latter should, (and he did) 1st give Haas et al., advance information concerning cotton, contrary to the rules and regulations aforesaid; 2nd Cause to be published (and he did publish) with official approval fraudulently obtained a false crop report; and 3rd that for these services Holmes should
747 receive a percentage of the gains of Haas et al., to be made in cotton speculation based upon their private information, or the public's misinformation, so as aforesaid obtained or brought about.

The indictments present this agreement between Haas, Holmes et al., as a conspiracy under Rev. Stat. Sec. 5440 and such conspiracy is charged as being both to defraud the United States, and to commit an offense against the United States. They also present the corruption of Holmes, not only as one of the objects of the conspiracy, but as a substantive offense, i. e. violation of Rev. Stat. Sec. 5451.

Defendants' first proposition is that inasmuch as it is not shown that the United States was deprived of anything of value by the transactions recounted above, *no* indictment for conspiracy to defraud under Sec. 5440 will lie.

This subject I have recently examined in U. S. v. Morse 161 F. R. 429, and need only repeat my conviction that the subject is not open to further discussion in courts of first instance. The indictment charges a confederated effort to deprive the National government of the right and privilege of proper service in the Department of Agriculture and that is enough.

It is next urged that in issuing crop reports, including cotton statements the United States was not exercising governmental functions. This contention is overruled in the statement of facts
748 above compiled from the indictments and public statutes.

Premising that a conspiracy under Sec. 5440, to commit an offense against the United States, presupposes that a statutory crime was intended by the conspirators, Haas finally argues that Sec. 5451 could not have been violated either in intention or fact, because, (1) Holmes was not an "officer of the United States," 2nd Holmes was not "a person acting for or on behalf of the United States in any official function" inasmuch as collecting and disseminating information about cotton was not an official (i. e. governmental) function of the United States, and if the National Government could not exercise that function a fortiori the same could not be delegated to Holmes. 3rd. Holmes was not prohibited from doing what he did by any statute, consequently he did not commit any "offense against the United States," and it follows that it was not such offense to procure him to commit non-criminal acts: and 4th. The promise of contingent gain made to Holmes, was not "money or other thing of value," nor a "contract, undertaking, obligation, gratuity, or security, for the payment of money or for the delivery or conveyance of anything of value."—wherefore though Holmes may have done wrong and Haas counselled or procured him to do so, the procurement was

not in the way prescribed by Sec. 5451 and consequently no one so acting can be reached either directly under Sec. 5451, nor indirectly under Sec. 5440.

749 The premise of these contentions is admitted,—since there are no common law offenses against the United States the offense mentioned in Sec. 5440 must be statutory.

(1) Whether Holmes was an "officer" need not be decided.

(2) It is held that Holmes was a person acting for the United States in an official function for the reasons above given.

(3) Let it be assumed for the sake of argument that Holmes commit-ed no crime (i. e. violated no statute) when he perpetrated any or all of the moral wrongs set forth in the indictments.

But violating "lawful duty" and breaking statutes are no- synonomous expressions, and defendants' argument passes too lightly over the language of Sec. 5451, which does make it a crime to induce one acting for the United States to do any act in violation of his lawful duty. It follows that Haas' contention can only be supported by holding that "lawful duty" means duty imposed by statute and nothing else. This is repugnant to common (and correct) usage, the phrase "lawful duty" is amply wide to cover duty imposed and regulared by a lawful superior.

In this sense it was Holmes' lawful duty to obey the rules and regulations of his Department duly promulgated and known to him, nor is it material that such regulations should be in writing.

750 Citations of cases like U. S. v. Keibel, 157 F. R. 396, to show that violating a departmental rule is not a crime do not advance the argument at all, let it be admitted that such is the law, but that does not show or tend to show that Congress cannot make it a crime to incite or cause another to violate such rule. This question however is not fairly presented in this case, and need not be pursued further than to note a query as to the correctness of the ruling in U. S. v. Matthews, 146 F. R. 306.

The question really is what does "lawful duty" mean, and was it Holmes' "lawful duty" to refrain from doing what the indictments assert he did. It would be a strange government wherein the conduct of officials of every grade, was regulated in minute detail by statute. "Of necessity usages have been established in every department of the government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits." U. S. v. MacDaniel, 7 Pet. 1.—Benson v. Henkel, 198 U. S. 1.

The indictment avers that Holmes knew the rule of secrecy, and Haas knew it, and with that knowledge induced its violation. Whether Haas knew it or not, is I think immaterial, but that Holmes violated his lawful duty in yielding to temptation, seems to me especially clear.

(4) The promise to give or pay Holmes a share of profits if there were any, is clearly within the prohibition of Sec. 5451. Of course the promise was unenforceable, because the consideration was

751 grossly immoral, but the same objection would apply to a formal contract for the payment of a definite sum of money.

It may be noted that this statement of the agreement with Holmes is found only in the "overt acts" appended to the indictment proper. It is not necessary to set forth overt acts in an indictment for conspiracy and if set forth they cannot be resorted to in aid of the averments of the charging portions of the pleading, nor can they on demurrer be considered,—and for the same reason,—they are not strictly part of the indictment. They may, on motion to quash afford ground for setting aside the pleading,—but that point is not raised here.

No other point suggested in argument seems to me to need comment. The demurrers are overruled.

Aug. 28, 1908.

C. M. HOUGH, *D. J.*

(Endorsed:) U. S. Circuit Court, Southern District of N. Y.—United States vs. M. Haas, et al.—Four Indictments. 307-08-09-10.—Opinion on Demurrers of Haas argued Aug. 7, 1908.—U. S. Circuit Court, Southern District N. Y., Filed Aug. 31, 1908, John A. Shields, Clerk.

752 Form No. 336.

Ex. 35.

U. S. Circuit Court, Southern District of New York.

Nos. 307-308-309-310.

UNITED STATES
versus
MOSES HAAS et al.

Affidavit and Notice of Motion.

Henry L. Stimson, United States Attorney, Attorney for U. S.

Due service of a copy of the within is hereby admitted.
New York, Oct. 6, 1908.

——— ———,
Attorney for ——— ———.

To Nash Rockwood, Attorney for Deft., 378 Broadway, Saratoga Springs, N. Y.

753 *Notice of Motion.*

United States Circuit Court, Southern District of New York.

No. 307.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and FREDERICK A. PECKHAM.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 308.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and THEODORE H. PRICE.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 309.

UNITED STATES
vs.
MOSES HAAS, Impleaded with THEODORE H. PRICE.

Conspiracy to Commit an Offense Against the United States, R. S., Section 5440 and 5451.

No. 310.

UNITED STATES
vs.
MOSES HAAS, Impleaded with FREDERICK A. PECKHAM.

Conspiracy to Commit an Offense Against the United States, R. S., Sections 5440 and 5451.

SIR: Please take notice that at a Stated Term of the United States Circuit Court in and for the Southern District of New York, to be held at the United States Court and Post Office Building, Borough of Manhattan, City of New York, in said Southern
754 District, on the 12th day of October at 11 A. M. or as soon thereafter as counsel can be heard, a motion will be made upon the annexed affidavit of Henry L. Stimson, United States Attorney for the Southern District of New York, and upon all the pleadings, papers and proceedings in the above entitled causes, for the consent of the said Circuit Court, that the United States Attorney for the Southern District of New York proceed with proceedings for the

removal of the defendant Moses Haas to the District of Columbia in accordance with provisions of Revised Statutes, Section 1014.

Yours, etc.,

HENRY L. STIMSON,
United States Attorney for the Southern District of New York, Attorney for the Plaintiff

Office and Post Office Address Room 50, Post Office Bldg., Borough of Manhattan, City of New York.

To Nash Rockwood, Esq., Attorney for Defendant Haas, 378 Broadway, Saratoga Springs, N. Y.

Dated, New York, October 6, 1908.

755 *Affidavit.*

United States Circuit Court, Southern District of New York

No. 307.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and FREDERICK A. PECKHAM.

Conspiracy to Defraud the United States, R. S., Section 5440.

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No. 310.

UNITED STATES
vs.
MOSES HAAS, Impleaded with FREDERICK A. PECKHAM.

Conspiracy to Commit an Offense Against the United States, R. S., Sections 5440 and 5451.

SOUTHERN DISTRICT OF NEW YORK,
County of New York, ss:

Henry L. Stimson, being duly sworn, says:

I am United States Attorney for the Southern District of
756 New York.

The above entitled indictments against the defendant Moses

Haas were presented to the Circuit Court of the United States for the Southern District of New York on May 29, 1908. On June 1, 1908, defendant Moses Haas appeared in open Court and entered a plea of not guilty to each of said indictments, with leave to withdraw said plea and to demur to or move with respect to each of said indictments, and on said June 1, 1908, was admitted to bail. Thereafter on June 18, 1908, defendant Haas withdrew said pleas of not guilty and moved to quash each of said indictments, and filed a demurrer to each of the same. Said motions and demurrers came on for argument on August 7, 1908, and on October 1, 1908, an order was duly entered denying each of said motions and overruling each of said demurrers, and directing the defendant to appear to plead to each of said indictments on October 12, 1908. On May 29, 1908, four indictments were filed against the defendant Moses Haas in the Supreme Court of the District of Columbia, being indictments Nos. 26086, 26087, 26088 and 26089.

In indictment 26086 defendant Haas is charged with conspiring with Edwin S. Holmes, Jr., and Frederick A. Peckham, to defraud the United States in violation of the provisions of R. S. Section 5440, the gist of the charge being that the defendants conspired that Holmes, in violation of his duty as associate statistician of the Bureau of Statistics of the Department of Agriculture, should
757 reveal to Haas and Peckham for speculative purposes information as to the prospective contents of the Government cotton crop report to be issued in the month of June, 1905, in advance of its official publication, said information being acquired by Holmes in the course of his official duty.

In indictment No. 26087 the defendant Haas is charged with conspiring with Frederick A. Peckham to commit an offense against the United States within the provisions of R. S. Sec. 5440, the gist of the charge being that the defendants conspired to give to Edwin S. Holmes, Jr., associate statistician of the Bureau of Statistics of the Department of Agriculture, a sum of money to induce him to disclose the prospective contents of the cotton crop report of June, 1905, in advance of its official publication and in violation of his lawful duty as associate statistician of said Bureau.

In indictment 26088, the defendant Haas is charged with conspiring with Edwin S. Holmes, Jr., and Theodore H. Price to defraud the United States in violation of provisions of R. S. Section 5440, the substance of the charge being that Edwin S. Holmes, Jr., in violation of his duty as associate statistician of the Bureau of Statistics of the Department of Agriculture was to reveal to his co-conspirators the prospective contents of the cotton crop report of June, 1905, in advance of its official publication and was to cause said cotton crop report to be false and inaccurate in material particulars.

In indictment No. 26089, defendant Haas is charged with conspiring with Theodore H. Price, in violation of provisions of
758 R. S. Sec. 5440, to commit an offense against the United States, the gist of the charge being that the defendants conspired to give a sum of money to Edwin S. Holmes, Jr., associate statistician of the Bureau of Statistics, Department of Agriculture,

to induce him to reveal to them for their speculative purposes the prospective contents of the cotton crop report of June, 1905, in advance of its official publication and to induce him to render said report false and inaccurate in material particulars, all in violation of his lawful duty as said associate statistician. The defendant Edwin S. Holmes, Jr., I am informed, will be arraigned in Washington on indictments 26086 and 26088 during the ensuing week.

On June 3, 1908, I received from the District Attorney of the District of Columbia certified copies of said indictments, with a request that I institute proceedings for the removal of the defendant to the District of Columbia in accordance with the provisions of R. S. Sec. 1014.

On June 29, 1908, I filed two complaints before United States Commissioner John A. Shields, against said defendant Haas, praying for his removal to the District of Columbia, based on indictments Nos. 26086 and 26087, 26088 and 26089 respectively, and Commissioner Shields on said date issued his warrant on said complaints. Said defendant Haas was produced by counsel before Commissioner Shields and gave bail, it being understood that the proceed-
759 ings for removal would not be pressed until after the determination of the motions and demurrers of said defendant then pending with respect to said indictments pending in this district. Said proceedings before the Commissioner have been adjourned from time to time and are now set for October 12, 1908, at 2 P. M. Before proceeding further with these removal proceedings, which if successful before the Commissioner, would result in a request to a judge of the District Court for a warrant for the removal of this defendant to the District of Columbia, I desire to secure the consent of the Circuit Court of this District to this course.

The indictments, both in this District and in the District of Columbia, which have been referred to above, relate to the so-called "cotton leak" matter. These particular indictments are based on transactions in May and June, 1905, but the ground to be covered in the trial in both instances covers transactions during a considerable period of time. For the cases to be disposed of with economy of the time of Courts, juries and of the Department of Justice, it is essential either that Holmes should be removed to this District for trial with the defendant Haas, or that the defendant Haas be removed to Washington for trial with the defendant Holmes on the conspiracy indictments in which they are co-defendants. The United States Attorney for the District of Columbia and members of the Attorney
760 General's staff resident in Washington have had charge of the investigation of this matter from its inception. Edwin S. Holmes, Jr., has already been tried once in the District of Columbia on an indictment growing out of the same general transaction, the trial resulting in a disagreement of the jury. This trial, I am informed, occupied about three weeks.

The criminal business of this District is of such volume and the assignments of terms of Circuit Court for criminal work are such that it will probably be impracticable to bring these cases to trial in this district before October, 1909. I have received from the United

States Attorney for the District of Columbia urgent requests for the prosecution of the removal proceedings. I am informed by him that if the defendants are promptly removed to Washington, it would be his purpose to move for trial on the first of December the indictments against Holmes, Haas and Peckham, and immediately upon the conclusion of this trial, the cases against Price, Holmes and Haas. It is impracticable to try all of the cases together because of the fact that Price and Peckham are not defendants to the same indictments.

It appears to be practicable to complete the trial of this defendant under the indictments pending in the District of Columbia before he could in any event be brought to trial in this District.

I am in receipt of a request from the Attorney General to be transmitted by me to this Court, that the Circuit Court in this District yield for the time its jurisdiction over these defendants to the
761 Supreme Court of the District of Columbia. Annexed hereto is a copy of the same.

(Sd.) HENRY L. STIMSON.

Sworn to before me this 6th day of October, 1908.

(Sd.) FREDERICK L. CAMPBELL,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

762 Copy.

S. G. DEPARTMENT OF JUSTICE,
WASHINGTON, *October* 5, 1908.

Honorable Henry L. Stimson, United States Attorney, Southern District of New York, New York.

SIR: On May 29th, 1908, there were returned into the Circuit Court of your District certain indictments against Theodore H. Price, Moses Haas, and Frederick A. Peckham, together with Edwin S. Holmes, Jr., charging them with conspiracy to defraud the United States and to commit offenses against the United States. At the same time, similar indictments were returned against these men in the Supreme Court of the District of Columbia. Holmes is a resident of Washington, while Price, Haas and Peckham are at present in the State of New York.

You will be good enough to request the Circuit Court of your District to consent to the removal of Messrs. Price, Haas and Peckham to Washington, for trial upon the indictments pending here, it being understood of course that should the trial here result in acquittal or conviction the indictments in New York will be dropped.

763 There are several reasons which lead me to make this request of the Circuit Court.

1. The indictments charge a conspiracy on the part of the several defendants to cause to be issued at Washington by the Bureau of Statistics for the Department of Agriculture of false cotton crop reports, and that Holmes, who was then Associate Statistician of the Bureau of Statistics, was to furnish to his co-conspirators in

advance of their official issue the information to be contained in the reports. While, owing to the commission in your District of acts in pursuance of the conspiracy, the Court in your District has jurisdiction of the offense, yet the conspiracy was in all probability actually formed in Washington. The false reports were prepared and issued here and the advance information was given out here. The real situs of the crime then is the District of Columbia, and the trials should therefore be had here.

2. The defendant Holmes has been arrested and is now awaiting trial on the indictments pending in the District of Columbia. There are two series of these indictments, one against Price, Haas and Holmes, and the other against Haas, Peckham and Holmes. It would be a great convenience and a vast saving to the Government to try the defendants together. Even this would necessitate two trials, one in each series. If the non-resident defendants are not removed to Washington, four trials would be needed, two in Washington and two in New York.

3. The great number of witnesses on the part of the Government to establish these cases are residents of Washington and for
764 the most part officers and employees of the Department of Agriculture. The Secretary of Agriculture and the Assistant Secretary of Agriculture are essential witnesses on the part of the Government. At the trial of Holmes, both the Secretary and the Assistant Secretary were on the stand several times, the Secretary himself being frequently recalled for further cross-examination. This could be easily done in a trial in Washington; but should these officials be required to attend a trial in New York, not only would the work of the Agricultural Department be seriously hampered, but matters of state in which the Secretary's advice should be desired might be interfered with.

The statistician and the Assistant Statistician and many other officials of the Bureau of Statistics are also necessary witnesses, while the Associate Statistician would be required, on account of his familiarity with the case, to be in constant attendance at the trial. The former trial of Holmes alone lasted about three weeks. It would not be possible to find any three weeks in the year during which the Bureau of Statistics would not issue, or be preparing to issue at least one crop report. Should the necessary witnesses in these cases be required to be in New York at the trial, it would be practically impossible to issue such a report.

Again, at the trial of these cases a great number of the original records of the Department of Agriculture will be required as evi-
765 dence. Many of these records are in constant use in the Department. The inconvenience to which the Department would be put by the placing of these records in evidence in a trial in Washington would be very slight. It might be a very serious obstruction to the public business should it be necessary to take these records to New York.

Again, at the former trial of these cases it was a daily occurrence to call for additional records from the Department. This would be difficult should the trial take place in New York.

Respectfully. CHARLES J. BONAPARTE,

Attorney General.

766 EX. 36.

United States Circuit Court, Southern District of New York.

UNITED STATES
v.
MOSES HAAS, Impleaded with Others, under Indictments Nos. 307, 308, 309, 310.

Affidavit in Opposition to Motion for Removal.

Nash Rockwood, Attorney for defendant Moses Haas, 378 Broadway, Saratoga Springs, N. Y.

767 United States Circuit Court, Southern District of New York.

No. 307.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and FREDERICK A. PECKHAM.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 308.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and THEODORE H. PRICE.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 309.

UNITED STATES
vs.
MOSES HAAS, Impleaded with THEODORE H. PRICE.

Conspiracy to Commit an Offense against the United States, R. S., Section 5440 and 5451.

No. 310.

UNITED STATES
vs.
MOSES HAAS, Impleaded with FREDERICK A. PECKHAM.

Conspiracy to Commit an Offense against the United States, R. S., Sections 5440 and 5451.

SOUTHERN DISTRICT OF NEW YORK,
State and County of New York, ss:

Moses Haas, being duly sworn, says:

768 I am one of the defendants in the four above entitled criminal causes. In the first of said indictments, to-wit No

307, I am jointly indicted with Edwin S. Holmes, Jr., and Frederick A. Peckham, charged with conspiracy to defraud the United States. In the second indictment, to-wit: No. 308, I am jointly indicted with Edwin S. Holmes, Jr., and Theodore H. Price, charged with conspiracy to defraud the United States. In the third indictment, to-wit: No. 309, I am indicted with Theodore H. Price charged with conspiracy to commit an offense against the United States under sections 5440 and 5451 of the Revised Statutes of the United States. In the fourth of said indictments, to-wit: No. 310, I am indicted with Frederick A. Peckham charged with conspiracy to commit an offense against the United States under Revised Statutes sections 5440 and 5451.

The above indictments, as I am informed and verily believe, were found against me and presented to the Circuit Court of the United States for the Southern District of New York on May 29th, 1908.

As alleged in the affidavit of Henry L. Stimson, verified the 6th day of October, 1908, on the same day, to-wit: May 29th, 1908, four indictments were filed against me in the Supreme Court of the District of Columbia, being known as indictments No. 26086, No. 26087, No. 26088, and No. 26089.

On or about June 1st, 1908, I appeared in open Court at the City of New York and entered a plea of not guilty to each of the
769 said four indictments returned to the United States Circuit Court for the Southern District of New York, and was given leave to withdraw said plea and to demur to or move with respect to each of said indictments as I might be advised, and on said June 1st, 1908, I was admitted to bail in said United States Circuit Court.

Thereafter and on or about June 18th, 1908, I withdrew said plea of not guilty and moved to quash each of said indictments found against me, upon the ground that I was compelled to be a witness against myself before the Grand Jury which returned said indictments, and I also filed a demurrer to each of the said indictments. Said motions and demurrers came on for argument on August 7th, 1908, and were argued before Hon. Charles M. Hough, United States Judge, who subsequently denied said motion and overruled said demurrers, and on October 1st, 1908, an order was entered denying said motions and overruling said demurrers and directing me to appear and plead to each of said indictments so found in the New York jurisdiction on October 12th, 1908.

Thereafter and on or about the 8th day of October, 1908, as I am informed by my counsel, Nash Rockwood of Saratoga Springs, N. Y., and verily believe, my said counsel was served with an affidavit and notice of motion returnable on the 12th day of October, 1908, at a stated term of the United States Circuit Court, which motion was made by the United States Attorney for said Southern District for the consent of the said Circuit Court that the United States Attorney for the Southern District of New York be permitted to pro-
770 ceed with proceedings for my removal to the District of Columbia, in accordance with provisions of Revised Statutes of the United States, section 1014, and this affidavit is filed in opposition to said motion.

Previous to the making of said motion and after I had appeared in

said United States Circuit Court, as aforesaid, and on or about June 29th, 1908, said United States Attorney for the Southern District of New York, filed complaints before United States Commissioner John A. Shields of the Southern District of New York against me, praying for my removal to the District of Columbia for trial, based on the indictments found in that jurisdiction, and said Commissioner Shields on said date issued his warrant on said complaints. I thereupon appeared before said Commissioner and gave bail and said matters are pending before said Commissioner Shields and now stand adjourned, as I am informed and verily believe, to November 4, 1908.

Previous to the filing of said petition for my removal before said Commissioner Shields and previous to the making of this motion, the said United States Circuit Court for the Southern District of New York had attempted to acquire and exercise jurisdiction of my person and, before the making of this motion, had passed upon the validity of said indictments and had overruled the motion to quash aforesaid.

I claim that as the indictments found in the New York and Washington jurisdictions allege practically identical offenses, that
771 the United States Court for the Southern District of New York, having taken unto itself jurisdiction thereof, is without power to suspend the operation of this jurisdiction or to transfer the same to the Washington courts. The rule of law applicable to this case being, as I understand it, that the court which first gains or takes jurisdiction will retain it in order to end the controversy.

Said indictments so found in the District of Columbia are in substance identical with those so found in the Southern District of New York, except that in the former the offenses charged, namely, the alleged conspiracies, are charged to have occurred in the District of Columbia, while in the latter they are charged to have occurred in the City of New York. Indeed, the said indictment to commit an offense against the United States so found in the District of Columbia, is identical both in form and substance with that so found in the Southern District of New York, except that in the former the situs of said alleged conspiracy is charged to have been in the District of Columbia, while in the latter it is charged to have been in the City of New York; and the first three counts of the indictment for conspiracy to defraud the United States, so found in the District of Columbia, is likewise identical both in form and substance with the indictment for said offense so found in the Southern District of New York, except that in the former again the situs of the alleged conspiracy is charged to have been in the District of Colum-
772 bia, while in the latter it is charged to have been in the City of New York. The remaining counts to said indictment for conspiracy to commit an offense so found in the District of Columbia obviously described the same identical alleged transactions as those charged in the first three counts thereof.

I have resided in the City of New York, in the Southern District of New York, for about sixteen years, and submit that I am entitled to be tried by a jury of the district of my residence, namely, of the Southern District of New York, wherein the charges preferred

against me are in the said New York indictments alleged to have been committed, and I submit that I should not be subjected to trial in a distant district wherein I do not reside, or before a jury of such district. I have read the letter of Attorney General Bonaparte attached to the moving papers herein and particularly the statement therein contained which reads:

"It would not be possible to find any three weeks in the year "during which the Bureau of Statistics would not issue, or be pre- "paring to issue at least one crop report."

which statement, as I understand it, is incorrect, there being as I am informed, periods during each year of considerably more than three weeks each when no crop reports whatever are issued, and that the persons employed in the Department of Agriculture who would probably be called as witnesses as set forth in the letter of said Attorney-General could attend at New York during such
773 periods without material inconvenience. Again, the records of crop reports are printed and published and could be as easily produced in New York as in Washington.

I submit that I should be tried, if at all, in the place of my residence and should not be put to the expense of taking my witnesses and counsel to Washington for trial before — foreign jury.

MOSES HAAS.

Subscribed and sworn to before me, this 16th day of October, 1908.

CHARLES C. LOCKWOOD,
[SEAL.] *Notary Public, Kings County.*

Certificate filed in New York County.

774 *Order and Notice of Settlement.*

At a Stated Term of the United States Circuit Court, held in and for the Southern District of New York at the United States Court and Post Office Building in said Southern District on the — day of November, 1908.

Present: Hon. Charles M. Hough, U. S. Judge.

No. 307.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and FREDERICK A. PECKHAM.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 308.

UNITED STATES
vs.
MOSES HAAS, Impleaded with EDWIN S. HOLMES, JR., and THEODORE H. PRICE.

Conspiracy to Defraud the United States, R. S., Section 5440.

No. 309.

UNITED STATES
vs.
MOSES HAAS, Impleaded with THEODORE H. PRICE.

Conspiracy to Commit an Offense Against the United States, R. S., Sections 5440 and 5451.

No. 310.

UNITED STATES
vs.
MOSES HAAS, Impleaded with FREDERICK A. PECKHAM.

Conspiracy to Commit an Offense Against the United States, R. S., Sections 5440 and 5451.

Motions having been made herein by the United States
775 Attorney praying that the United States Circuit Court for the Southern District of New York consent that he proceed with proceedings for the removal of the defendants Moses Haas, Theodore H. Price and Frederick A. Peckham to the District of Columbia in accordance with provisions of the Revised Statutes Section 1014, and said motions having come on to be heard at a Stated Term of this Court on October 12, 1908, and on reading and filing the notices of motion of the United States Attorney with due proof of service appearing thereon, and the affidavits of Henry L. Stimson, United States Attorney, in support of the motions, and after reading and filing the affidavits of Theodore H. Price, Moses Haas and Nash Rockwood in opposition thereto, and after hearing Goldthwaite H. Dorr, Assistant United States Attorney, in support of the motion and Delancy Nicoll, Esq., on behalf of the defendant Theodore H. Price in opposition thereto, and due deliberation having been had.

Now, on motion of Henry L. Stimson, United States Attorney, it is Ordered, that said motions be and they hereby are granted.

C. M. HOUGH,
U. S. D. J.

776 *Decision of Judge Hough on Motion for Removal.*

777 U. S.
vs.
HAAS & ORS.

Decision of Judge Hough on Motion for Removal.

No legal reason is perceived why every Court in which a man is indicted should not legally *attempt* to bring the accused to trial.

If there are many of them, and they all try to get the defendant at the same time,—the ensuing — should be cleared away by the Court or Judge or other authority having the power of surrender. This court has not jurisdiction under U. S. R. S. 1014, that no objection and (I think) can have no right to object,—to the pursuit of such legal remedies as the Courts or Prosecuting officers of the Dist. Columbia may have under the section of the Rev. Stat. referred to.

The convenience of either, prosecutor or defendant is not important, the Dist. of Columbia has a legal right to proceed in the way pointed out by Statute, and to such procedure this court assents.

Motion granted.

C. M. H.,
U. S. D. J.

Oct. 24th, 1908.

778 UNITED STATES
vs.
MOSES HAAS ET AL.

Under Section 1014 for Violation of Section 5440.

Opinion of Commissioner.

On June 24th, 1908, complaints were verified before me by Assistant United States Attorney Dorr, based on accompanying exemplified copies of indictments under Revised Statutes United States Section 5440, found this year in the Supreme Court of the District of Columbia, the complaints seeking the removal of defendants under Revised Statutes 1014 for trial in the District of Columbia. The case against defendant Haas has been closed, and elaborate briefs submitted. The indictments, charging a conspiracy to commit an offense against the United States and to defraud the United States, were received in evidence before me, as also bench warrants issued thereon, and the identity of defendant Moses Haas with the person of that name, named in the indictment was conceded. The defense

offered in evidence indictments for more or less similar offenses under Section 5440, found in the District of Columbia in 1905 against defendant Haas, and also the record of two removal proceedings in 1905 and 1906 before Commissioner Ridgway and before one of the District Judges of this District, culminating in defendant's discharge; also indictments found this year in this District against Mr. Haas for similar offenses under the same statute, charging offences committed here, and proof that defendant is now on bail on those charges. These New York indictments were recently sustained on demurrer by Judge Hough in an opinion reported as U. S. vs. Haas, 163 Fed. Rep. 908.

1. Defendant insists that the prior removal proceedings are *res adjudicata;* or at least require the exaction of a very high
779 degree of proof before defendant can be committed, and reference is made to a decision by Judge Holt handed down on May 9th, 1906, in which he holds that, while there can be no strict *res adjudicata* as to commitment or removal proceedings, "ordinarily, in the absence of special circumstances the decision of any judicial officer having jurisdiction should be held to be conclusive on the same set of facts." (See also In re Wood, 95 Fed. Rep. 288, In re Kelly, 26 Fed. Rep. 852, Brewer, J.) The circumstances, however, that these new District of Columbia indictments, found three years later, allege different offenses, though under the same statute, and that it has just been held by Judge Hough in U. S. vs. Haas, *supra*, that similar indictments, found in this District, adequately charge offenses against the United States, constitute such "special circumstances" within the meaning of Judge Holt's decision, as requires me to dispose of these complaints on the merits, particularly as the new indictments cannot be said to present "the same set of facts," within the principle referred to, though it is doubtless true that defendant is entitled to a strict scrutiny of the proof in order to avoid undue harassment. Defendant's rights can be adequately protected, if I am wrong, by the District Judge, from whom a warrant of removal must, in any event, be secured on notice, before removal can be ordered. It should, moreover, be noticed that, in as far as the complaint charged a conspiracy to commit the offense of misconduct in office, which was particularly involved in the former removal proceedings, this charge has been here dropped by the Government by amendment of the complaint. Moreover, Judge Holt decided the earlier case on the Government's then concession that "there is no statute of the United States which makes such acts as
780 are alleged in the indictment an offense, and that there are no written rules or regulations which the Department of Agriculture has adopted, pursuant to any Statute or otherwise, prohibiting such transactions;" while in the new indictments, as in those passed upon by Judge Hough, Section 5451 is relied upon as a statute which defendant and others conspired to violate, (as to giving or offering bribes to induce any officer of or person acting for or on behalf of the United States in any official function to do or omit to do any act in violation of his lawful duty), and reference is also made to "a written and published rule or regulation of the Agri-

cultural Department (of which judicial notice is taken), that no crop information should be published or divulged by any subordinate without the written approval of a bureau chief, which Holmes was not."

2. As Judge Hough deemed the two sets of indictments thus clearly distinguishable, and further felt constrained to hold that, under the most recent cases, the proposition that there may be a conspiracy to defraud the United States, under Section 5440, though the United States would not be deprived of anything of pecuniary value, where there was a confederated effort to deprive the national government of the right and privilege of proper service in the Department of Agriculture, is a "subject is not open to further discussion in courts of first instance." I shall of course hold such counts of the indictment good, and under the state of proof before me, they make out probable cause.

3. As some of the counts in each indictment are clearly good as far as they allege in substance offenses against the United States, I do not deem it necessary to discuss each of the many counts involved separately, for defendant, if removed to the District of Columbia or if he appears after bailing, is subject to any counts or indictments pending there against him, as was held specifically by our Circuit Court of Appeals in Price vs. McCarty, 89 Fed. 781 Rep. 84, 87 in describing limitations to particular counts or indictments in a warrant of removal as "nugatory and not binding upon the courts of the District of Columbia."

4. Various technical objections to the different counts in the indictments are made by defendant, and he claims that they do not adequately charge him with any offense, but it is of course settled that in removal proceedings, the indictment cannot be treated as if it were the subject of a demurrer, that being the province of the trial court in the forum where it was found, and that it suffices, to justify removal, if it substantially charges an offense against the United States, committed in the District to which removal is sought. I am of opinion that the indictment in question, under the authorities contained substantial charges of crime, and that the alleged imperfections in statements are not such as to bar removal. (Benson vs. Henkel, 198 U. S. 1, and cases there cited and Tinsley vs. Treat, 205 U. S. 20, does not hold to the contrary). I think this disposes of such objections as alleged failure to charge the intent adequately. Duplicity, alleged merger in certain other conspiracy to bribe counts, alleged failure to negative the official character, present or prospective, of some of the conspirators, in corporation by reference of the allegations of certain counts in others, alleged inadequate allegations of venue, and of time and the like.

5. It is also objected that the proceedings should be dismissed because the complaints are on information and belief, but the objection is without merit in my opinion, under Beavers vs. Henkel, 194 U. S. 73 and in re Dana, 68 Fed. Rep. 886 at 896. The same is true of the objection that bench warrants issued on the indictments in the District of Columbia are not referred to in the complaints

here, and were issued subsequently; their only purpose seems
782 to be to show that defendants are "wanted" in the District to which removal is sought, which fact is sufficiently indicated by the indictments themselves, and even indictments or complaints from the District to which removal is sought, while commonly required by the District Judge before ordering removal (U. S. vs. Price, 84 Fed. Rep. 636), are not essential, certainly not before the Commissioner (Price vs. McCarty, 89 Fed. Rep. 84 88 (C. C. A.)

6. Defendant also contends that commitment is unauthorized, by reason of the alleged bar of the Statute of Limitation. To establish this defense, the earlier indictments of 1905 from the District of Columbia are relied upon, alleging dates in some instances, *prima facie*, beyond the statute of limitation, and also the New York indictment. Such use of indictments as evidence, the date in which are largely formal is certainly novel, and I am not referred to any authority sanctioning the same. Nor are the exceptions to the Statute of Limitation, expressed or possibly implied by reason of the pendency of the earlier indictments negative by proof before me. (Rev. St. Sec. 1045). Nor, as already seen, are the same conspiracies involved, so that proof of a conspiracy formed at a particular time to commit certain acts, does not necessarily negative a charge of a subsequent conspiracy to commit somewhat different acts and possibly involving other and different persons. (See U. S. v. Green 100 F. R. 941, 946 Brown, J.; 115 F. R. 343, 350 Speer, J.) I do not therefore regard this defense as established. Aside from these objections, moreover, the Supreme Court of the United States has just held that the defense of the Statute of Limitations will not bar inter-state rendition (Pierce vs. Creecy, 210 U. S. 387), and I doubt whether, in view of this analogy even *proof* of this fact could prevent a
783 finding of "probable cause," merely, and whether this is a question that can be litigated elsewhere than in the forum where the indictments are pending.

7. The same reasoning applies to the attempt to rebut the charges of an offense committed in the District of Columbia, by use of the New York indictments, charging an offense here, particularly not as to such offense as a conspiracy, which under Revised Statutes 731 may be triable in several districts, in all of which it may have been partly committed. (Armour Co. vs. U. S. 209 U. S. 56, 76 7, U. S. vs. Green, 100 F. R. 941, 946.)

8. Finally, it is contended that removal to the District of Columbia is unauthorized, because defendant is under indictment here and on bail here, for alleged offenses committed here. But that involves merely the question whether an order for removal should or should not issue, and is a matter for the determination of the District Judge, under Section 1014. The appropriate consent, or other action, justifying removal can, if requisite, be had on such subsequent application, as in Beavers vs. Haubert, 198 U. S. 77 and U. S. vs. Neely, 103 Fed. Rep. 626, 634.

I am therefore constrained to commit defendant on the two complaints pending before me, to await the action of one of the District

Judges on an application to be made to him for a warrant of removal.

November 30th, 1908.

JOHN A. SHIELDS,
U. S. Commissioner.

(Endorsed:) U. S. Circuit Court, Southern District New York. Filed Nov. 30, 1908. John A. Shields, clerk.

784 Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of MOSES HAAS for a Writ of Habeas Corpus and Writ of Certiorari.

Bond.

U. S. Circuit Court, Southern District N. Y.

Filed Nov. 30, 1908. John A. Shields, Clerk.

785 In the United States Circuit Court for the Southern District of New York.

In the Matter of the Application of MOSES HAAS for Writs of Habeas Corpus and Certiorari.

Know all men by these presents, that we Moses Haas as principal and Martin Engel as surety, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars ($5,000) to be paid to the United States, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 30th day of November, 1908.

Whereas, lately to wit, on the 30th day of November, at a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, an application was made
786 by the above named Moses Haas for a writ of Habeas Corpus and Certiorari which Writs were issued under the seal of said Court and the date of the argument of the matters alleged in said petition fixed by Hon. George C. Holt, United States Judge for December 4th, 1908, with a further order that the said Moses Haas should be released on bail in the sum of Five Thousand Dollars ($5,000).

Now, therefore, the condition of the above obligation is such that if the said Moses Haas shall duly personally appear before said United States Circuit Court for the Southern District of New York on said 4th day of December, 1908, at 11 o'clock A. M. on that day, and at such future time or times as may be ordered by said court, and shall in all respects abide the order of said Circuit Court and

not depart without leave thereof, then this recognizance to be void, otherwise to remain in full force and virtue.

(Sd.) MOSES HAAS [L. S.]
" MARTIN ENGEL. [L. S.]

In Presence of
JOHN A. SHIELDS,
U. S. Comm'r.

787 STATE OF NEW YORK,
Southern District of New York, ss:

On this 30th day of November, 1908, before me personally appeared Moses Haas and Martin Engel to me known and known to me to be the persons described in and who executed the foregoing undertaking and they severally acknowledged to me that they executed the same for the uses and purposes therein mentioned.

(Sd.) JOHN A. SHIELDS,
U. S. Comm'r.

STATE OF NEW YORK,
Southern District of New York, ss:

Martin Engel being duly sworn doth depose and say as follows: That he is a resident of the City, County and State of New York, that he is worth the sum of Ten Thousand Dollars ($10,000) over and above all property exempt by law from levy and sale under and by virtue of an execution. That he is a freeholder and householder residing in said City of New York as aforesaid.

(Sd.) MARTIN ENGEL.

Subscribed and sworn to before me this 30th day of November, 1908.

(Sd.) JOHN A. SHIELDS,
U. S. Comm'r.

788 In the Circuit Court of the United States for the Southern District of New York.

MOSES HAAS, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York, Respondents.

Take notice, that upon the annexed affidavit of Moses Haas, verified the 21st day of December, 1908, and upon the papers and exhibits therein referred to and thereto attached, the Circuit Court of the United States for the Southern District of New York will be moved for a rule or order that the testimony of J. F. Brown and of Samuel McC. Hawkins given before United States Commissioner Shields on the 10th day of December, 1908, in a proceeding then pending before said Commissioner entitled "United States against

Theodore H. Price" be made a part of the record herein and
789 considered by the Court in its determination of this matter.

Also, that the photographic exhibits referred to in said testimony aforesaid, be also added to and included in said record and considered by the Court upon said application.

Said motion to the Circuit Court will be brought on for hearing before said Court at the Post Office Building in the City, County and State of New York on the 21st day of December, 1908.

Dated, December 21, 1908.

Yours, etc.,

NASH ROCKWOOD,
378 *Broadway, Saratoga Springs, N. Y.*,
MAX D. STEUER,
115 *Broadway, New York City,*
Attorneys for Petitioner.

To Honorable Henry L. Stimson, Attorneys for Respondents, Post Office Building, New York City.

790 In the Circuit Court of the United States for the Southern District of New York.

MOSES HAAS, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York, Respondents.

SOUTHERN DISTRICT OF NEW YORK, *ss.:*

Moses Haas, being duly sworn, says:

I am the petitioner in the above entitled matter which is now pending in the Circuit Court of the United States for the Southern District of New York before Judge Ward. The said matter has been argued and submitted for decision, which has not yet been rendered.

Four indictments were found against me in the Supreme Court of the District of Columbia in the month of May, 1908, as follows:

Indictment No. 26,086, against Edwin S. Holmes, Jr.,
791 Frederick A. Peckham and Moses Haas, returned to the Supreme Court of the District of Columbia on May 29, 1908, charging conspiracy to defraud the United States.

Indictment No. 26,087, against Moses Haas and Frederick A. Peckham, returned to the Supreme Court of the District of Columbia, on May 29, 1908, charging conspiracy to commit an offense against the United States.

Indictment No. 26,088, against Theodore H. Price, Moses Haas and Frederick A. Peckham, returned to the Supreme Court of the District of Columbia, on May 29, 1908, charging conspiracy to defraud the United States and to commit an offense against the United States.

Indictment No. 26,089, against Theodore H. Price and Moses Haas, returned to the Supreme Court of the District of Columbia, on

May 29, 1908, charging conspiracy to commit an offense against the United States.

Proceedings were instituted on said indictments so found against me in the District of Columbia to remove me for trial to said District, and an order committing me to the custody of the United States Marshal for the Southern District of New York in said matter was made by Hon. John A. Shields, United States Commissioner for the Southern District of New York. I thereupon applied to the United States Circuit Court for a writ of habeas corpus to be discharged from said custody, which application was granted, and on the return date thereof said matter was argued in the said Circuit Court before
792 Judge Ward, as aforesaid, and submitted for decision, and I am now enlarged on bail in said matter.

Proceedings were also instituted before said Commissioner against Theodore H. Price, who is jointly indicted with me in the District of Columbia by indictments Nos. 26,088 and 26,089.

Since the argument of my said application in the said Circuit Court, the hearing involving said Price has been had before said United States Commissioner, from which proceedings it appears that said indictment No. 26,088, so found against me in the District of Columbia, has apparently been changed or altered, and that said indictment No. 26,088, upon which I was held by Commissioner Shields, is defective and void in the following respects:

It appears that the presentment of the Grand Jury in the District of Columbia relating to said indictment charged Theodore H. Price, Moses Haas and Frederick A. Peckham with conspiracy to defraud the United States and to commit an offense against the United States.

Said indictment is also endorsed "United States against Theodore H. Price, Moses Haas and Frederick A. Peckham."

Notwithstanding said presentment and endorsement, said
793 indictment in the body thereof appears to be against "Theodore H. Price, Moses Haas and Edwin S. Holmes, Jr.

It further appears that in the records of the court said indictment was returned against Theodore H. Price, Moses Haas and Frederick A. Peckham, but that the name "Frederick A. Peckham" has been erased and the name of "Edwin S. Holmes, Jr." substituted.

I have obtained and herewith submit upon this application photographic copies of the said presentment, endorsement and court records showing the changes aforesaid, which I hereto annex and mark exhibits 1 to 5 inclusive.

I also annex hereto copy of the testimony of J. F. Brown and Samuel McC. Hawken given at the hearing before said Commissioner Shields in said Price matter on December 10, 1908, which testimony refers to the records of the court in the District of Columbia, and shows the method and manner in which said changes and erasures noted in the photographs aforesaid were made. Said testimony is referred to as exhibit 6.

I deem it important to my rights as said matters concerning said alleged indictment No. 26088, should be called to the attention
794 of the Circuit Court, and made a part of the proceedings in my case now pending therein, for the reason that I claim that

said indictment No. 26088, in addition to the reasons previously urged against it, is illegal and void for the reasons herein given, and that the facts here stated should be considered by the court in arriving at its conclusions.

No previous or other application has been made for the order asked hereon.

MOSES HAAS.

Subscribed and sworn to before me this 21st day of December, 1908.

CHARLES C. LOCKWOOD,
[SEAL.] *Notary Public, Kings. Co.*

Certificate filed in New York County.

795 EXHIBIT 6.

JAY F. BROWN, being first sworn on behalf of the defense, testified as follows:

Direct examination by Mr. GANS:

Q. Where do you reside?
A. 2018 Eighth St., Washington, D. C.
Q. What is your business?
A. Photographer.
Q. Were you called to go to the clerk's office of the court in the District of Columbia—the Supreme Court of the District of Columbia—some days ago?
A. Yes sir.
Q. And there did you take photographs of certain of the records connected with that court?

Mr. DORR: Objected to as immaterial. I cannot see how this tends to show that Mr. Price did not commit the offense charged in the indictment.

Mr. GANS: We are going to show that no proper indictment was found against him.

Mr. DORR: If it tends to show that the copy received before you is not a true copy of the Washington indictment, then I withdraw my objection.

796 Mr. GANS: We are going to offer it for the purpose of establishing that it appears by the records of the court in Washington that no such indictment as has here been presented and certified was actually returned into the court.

The COMMISSIONER: I will allow the question if that is what you are offering it here for.

(Question read.)

A. I did.
Q. And certain papers?
A. Yes sir.

Q. Do you recognize these photographs that I show to you as the photographs that you then took?

A. I did.

Q. And did you several days later go to the same place and take photographs of other records?

A. I did.

Q. And these that I now show you are the subsequent ones?

A. They are.

Mr. GANS: I offer in evidence separately the two batches.

Mr. DORR: I object. These photographs have no tendency to contradict the evidence offered by the Government on this point; they do not show the inaccuracy of any certified copies of these documents or any authentication of those documents or indictments heretofore offered in evidence, and as incompetent and irrelevant.

797 Mr. GANS: They cannot do the Government's case any harm and they enable us to present the point we desire to make.

Mr. DORR: Certainly irrelevant and incompetent matter cannot do the case any harm, and there is no reason for burdening the record with it.

The COMMISSIONER: As I understand these are simply photographs of papers——

Mr. GANS: No; there is something more than that.

Mr. DORR: I will object to it as incompetent and irrelevant because it does not tend to controvert anything that the Government put in evidence. The Government might offer it as corroboration of its own case, but certainly it is not competent for the defendants to offer it.

Mr. GANS: If the Government can offer these papers then we can offer them too.

The COMMISSIONER: I will allow them in and give you an exception.

Mr. DORR: I object separately to the alleged presentments in that it is entirely immaterial whether or not the indictments be accompanied by a presentment and that it in no way tends to rebut the evidence offered by the Government that certain indictments

798 are outstanding in the District of Columbia.

Objection overruled.

Photographs marked Exhibits 1 to 7 of this date.

Q. I ask you to look at exhibits 4 and 5 and tell me whether or not exhibit 4 is a photograph of the back of a paper of which exhibit 5 is the face?

A. Exhibit 4 is the back and exhibit 5 is the face.

Q. And I ask you to look at exhibits 7 and 6, and tell me whether or not exhibit 7 is a photograph of the back of a paper of which exhibit 6 is a photograph of the front or face?

A. Exhibit 6 is a photograph of the face and exhibit 7 is the photograph of the back.

Q. Exhibit 1 I take it is the photograph of the back of the paper?

A. That is correct.

Q. And exhibits 2 and 3 are photographs of pages of separate books are they not?
A. Of separate books, yes.
Q. Did you develope the plates yourself?
A. I did.
Q. And took the pictures?
A. I did.

No cross-examination.

799 SAMUEL McC. HAWKEN, sworn on behalf of the defense, testified as follows:

Direct examination by Mr. GANS:

Q. Mr. Hawken where do you reside?
A. I reside in the District of Columbia.
Q. What is your official position, if any?
A. I am and have been for the last five years an assistant clerk in the Supreme Court of the District of Columbia.
Q. Mr. Hawken, I show you a photograph marked Exhibit 3, and ask you to tell us from what record it is made, if any? All I want is the name of the book?
A. That is the photographic copy of a part of the page contained in the criminal minutes 44 of the Supreme Court of the District of Columbia. I am a little in doubt as to whether that is 44, but my impression is it is either 44 or 45.
Q. It is a book of criminal minutes?
A. It is a book of criminal minutes.
Q. And it is the book in which entries are made of any indictments or presentments that are brought before the court?
A. It is the book in which is entered, or are entered, the names of all persons against whom indictments are returned.
Q. And the other matters which appear on the record to
800 have been entered there?
A. Beg pardon?
Q. You limited it to the name- of the persons against whom indictments were returned?
A. Yes.
Q. I see here other things?
A. I meant to say among other things.
Q. Also it is a book in which entries are made of the charges made?
A. The names of the persons against whom indictments are returned, and the offenses charged against those persons and the number of the cases in which the indictments are returned.
Q. Presentments are not entered?
A. Presentments are not entered.
Q. In this particular book or in any book?
A. A notation of the fact that a presentment accompanies an indictment is made on the docket of the court—presentment and indictment filed on such a day, but the fact of the notation, the return

ing of the indictment is made in the minutes, but not the notation of the presentment which accompanied the indictment.

Q. Mr. Hawken, on Exhibit 3 of this date there appears a record as follows "The Grand Jury comes into court and presents indictments, each endorsed thereto a true bill against", and then
801 there are several entries, and we come now to one opposite a number, 26088, which reads as follows: "Theodore H. Price, Moses Haas and Edwin S. Holmes, Jr." the words "Edwin S. Holmes, Jr." being written between the lines, and underneath, and on the line, the words "Frederick A. Peckham". Opposite these names appears No. 26088 with ditto marks, and opposite also appears as a description: "For conspiracy to defraud the United States and to commit an offense against the United States." Now, I want to ask you with regard to this interlineation and the striking out of the name "Frederick A. Peckham," and ask if you know who did it?

Mr. Dorr: Objected to as incompetent. The proceeding is not against either Frederick A. Peckham or Edwin S. Holmes, Jr., and here is a record which shows an indictment found against Theodore H. Price and shows the charge; it is entirely immaterial.

Mr. Gans: I am asking about this interlineation. I have a right to show how a record of a court has been altered.

Mr. Dorr: But not a record which does not relate to Theodore H. Price.

Mr. Gans: This very alleged indictment on which he is
802 sought to be removed.

Mr. Dorr: The Government here shows that Theodore H. Price was indicted, and shows the offence for which he was indicted, and there is no irregularity upon the face of it anywhere as to Theodore H. Price. I object to the question on that ground, and as immaterial, irrelevant and incompetent.

Mr. Gans: Edwin S. Holmes has been written in and Frederick A. Peckham struck out. I want to find out who did it and when it was done. I do not intend to impugn the intentions of the gentlemen who made this change or to suggest that there was any intentional impropriety on his part but I want to establish merely the facts as to how it was done.

Mr. Dorr: I object to that on the ground as I stated before, that it is entirely immaterial whether any change was made in the record of Holmes, Jr., or Frederick A. Peckham; in fact it does not appear from the record any change has been made: the name has been written down and maybe improperly stricken out, but it has no relation to Theodore H. Price; there is no alteration in regard to his name.

803 Mr. Gans: I think this is the most startling attitude the District Attorney's office has ever taken. Here we are engaged in a proceeding endeavoring to establish certain facts about a record, showing that the record of indictment found against us has been altered, a most serious situation. Now the District Attorney comes into court and says that he is going to block an attempt to show those records were altered on the theory that they do not affect us. We say they do affect us for this reason, that conspiracy is a

joint crime; one man cannot commit it; a conspiracy between A, B and C is not a different thing from a conspiracy between A, C and D. Now, if the Grand Jury had intended to indict A, D and C, that does not authorize the District Attorney to put in a bill before them to indict A, B and C and procure them to sign that as a true bill whether he does it as intention, subterfuge or as matter of mistake.

The COMMISSIONER: Mr. Dorr's point is that that might perhaps be a good objection to raise as to this man Peckham, but how does it affect Price?

Mr. GANS: It affects Price this way: If the Grand Jury had intended, if you can spell out an intention of the Grand Jury
804 to indict Price for a conspiracy between Peckham and Haas that does not support an indictment that Mr. Price conspired with Peckham and Holmes. Now, the Grand Jury has got to determine who the people are.

Mr. DORR: And that Grand Jury has determined that by the record before you, by that indictment before you, which is presented by them as a true bill and signed with the signature of the foreman to that effect; what constituted the charge against this man Price appears upon the face of the indictment which is offered here in evidence.

The COMMISSIONER: Make your offer and——

Mr. FULLER: Just a second, if your Honor pleases the photograph is a photograph of a page of the court records in the Supreme Court of the District of Columbia, the jurisdiction in which this alleged indictment was returned. Now, if your Honor will listen to the language: "The Grand Jury comes into court and presents indictments, each endorsed thereon a true bill against" the following parties. Now, if your Honor please, that is the official record of the court.

The COMMISSIONER: You have got that in.

Mr. FULLER: Now we want to show why that official record ——

The COMMISSIONER: I have allowed you to put that in.

805 Mr. GANS: The record being in, what we want to show is how those interlineations came about.

Mr. DORR: That has nothing to do with Price.

Mr. GANS: It certainly has.

Mr. DORR: His name appears as one of the defendants in the indictment.

The COMMISSIONER: I cannot see what harm will arise from letting him testify to it.

Mr. DORR: It is not that the Government fears anything that the investigation will show, but this hearing before the Commissioner is going into matters purely irrelevant and immaterial.

The COMMISSIONER: I will let him ask this one question and then stop him, but if this gentleman knows how that happened I will allow it.

Q. Mr. Hawken, do you know who made this change in the record?

A. I do, sir.

Q. You did it yourself?

A. I made it.

Q. Do you know when the change in the record was made?

A. Yes. Those indictments were returned on May 29th, 1908, and in entering them, the names of those against whom the indictments purported to be——

806 Q. I asked when you made them?

The COMMISSIONER: Go on and give your answer.

Mr. GANS: I object to it as irresponsive.

The COMMISSIONER: I will allow it to be answered.

A. (Continuing:) returned, I followed the caption endorsed on the back of the indictment. On June 1st, the next day after the 29th and the 30th, which was a legal holiday and the next day was Sunday—on the next day, Mr. Lester of counsel for Holmes, came into court and asked me to let him see the records, which I did. After looking at the records he said that he was surprised that there was only one indictment——

Mr. GANS: I object to a statement by Mr. Lester.

The COMMISSIONER: That is the statement; it is in now.

Mr. GANS: I make an objection to the statement of a third party as hearsay.

The COMMISSIONER: You have asked about it and I will allow it.

A. (Continuing:) Mr. Lester expressed surprise that there was only one indictment against Holmes, and he said that from the indictment, or from the papers, he had gathered that there were two indictments, that Holmes had been indicted with Price, and
807 asked me to let him see the original indictment; I got him the original indictment and after examining that he said, why, here it is. He says, while the name of Peckham——

Mr. GANS: We object.

The COMMISSIONER: The Commissioner states that counsel for the defendant Mr. Price wishing to find out how this alteration or erasure, whatever it was, was made, I have under objection allowed this witness to answer the question and I propose to take his answer in full.

Mr. GANS: Hearsay or no?

The COMMISSIONER: It is all hearsay.

Mr. GANS: We have not asked for hearsay.

The COMMISSIONER: You asked how that alteration was made, didn't you?

Mr. GANS: No; if the Commissioner will pardon me——

Mr. FULLER: We asked who made the alteration and when it was made.

The COMMISSIONER: And he is telling you when it was made and how.

Mr. FULLER: And everything else that happened in the District of Columbia on or about the same date.

The COMMISSIONER: Go on and give your answer.

808 Mr. GANS: If the Commissioner will look at my question you will find I directed it to this proceeding, as to when that

was made and who made it. That would be answered in two words; it would be answered by the words, I made it, it was made on the 1st day of June. Now that is all that is pertinent to my question.

The COMMISSIONER: Now he is telling you how it was made.

Mr. GANS: I didn't ask that.

Mr. FULLER: Just one word now. Here is a record of a court, or photograph of a record of a court. Now are you going to allow this man to go behind everything that is there in writing and explain why he made certain entries on the record?

The COMMISSIONER: No; of course not.

Mr. FULLER: I don't think that it is competent at all to tell all the conversations that the clerk has had with different attorneys in the District of Columbia showing his mental operations, as to why he did this and why he did that. That is not competent.

The COMMISSIONER: He is merely saying how he came to make it.

Mr. FULLER: We don't impugn his motives in the slight-
809 est degree concerning the change here; it is not a question of intent.

Mr. GANS: Let us get our record straight.

The COMMISSIONER: I don't want to go into a lot of hearsay testimony.

Mr. DORR: Mr. Fuller says you cannot go back of the record. If that is true the whole question is incompetent. Now if we are going back of the record at all, which is perfectly clear on its face, then we are going to find exactly what happened. You cannot go half way, or as far as you think you want to go and then stop.

Mr. GANS: Will your Honor send for 36 Fed. Rep.?

The COMMISSIONER: I cannot get it just now.

Mr. GANS: There is a case in 36 Fed. Rep. the McKinney case, which supports this proposition I am going to speak to now. I am referring now to a case in the highest court of the State of Virginia and I will read to you the circumstances as they appear in the record of that case in the books. (Reading and arguing at length).

The COMMISSIONER: Your contention is this clerk had no right to correct his minutes and strike that out?

Mr. GANS: Yes; and he made it subsequent to the original entry.

810 Q. Mr. Hawken, you have testified that this amendment of the record that we are speaking of was made by you and was made on the first day of June, several days subsequent to the original entry of the record?

A. Two days.

Mr. DORR: The first court day after the day of entry?

The WITNESS: Yes.

Q. It was several calendar days later, that is so, is it not?

A. That is exactly right.

Q. There is but one question more I want to ask you with regard to that, and that is this: Before making that entry you had received no order of the court to make it?

A. I didn't consider it necessary.

811 Mr. GANS: I ask to strike it out.

A. I didn't receive the order of the court.

Q. In other words, you did it on your own initiative; yes or no please.

Q. Yes; I did so.

Q. Now, then, sir, I will show you the photograph numbered Exhibit 2 of this date and call your attention to the fact that there appears therein "3 Frederick A. Peckham" and a line drawn through it, and then underneath that the word- "Edwin S. Holmes, Jr." Will you tell me who made that correction and on what date?

A. This is a page taken from docket No. 25 of the criminal docket of the Supreme Court of the District of Columbia; this correction was made at the same time that the other correction was made and under the same circumstances.

Q. That is, your own initiative?

A. Of my own motion.

Q. Mr. Hawken, you are familiar with the records of your court?

A. I am, sir.

Q. And you know these to be copies of the face and back respectively of a presentment filed in the Supreme Court of the District of Columbia, do you not?

A. Yes; I recognize those to be—I recognize Exhibit 5 to be the face of the presentment filed in the Supreme Court of the District of Columbia on May 29, 1908; and I recognize Exhibit 4 to be the back of the presentment, apparently the back of the same present-
512 ment that Exhibit 5 is a photographic copy of the face of in that same case.

Q. I ask you the same question with respect to the photographic copies of Exhibits 6 and 7 of this date?

A. Yes. This appears to be a photographic copy of a face and back of a presentment numbered 26089.

Q. Now, will you tell me, sir, if you know, whether the presentment No. 26089 was filed in the Supreme Court of the District of Columbia prior to a certain alleged indictment bearing the same number?

Mr. DOBB: I object.

Q. And a purported copy of which is in evidence here?

Mr. DOBB: I object on the grounds already stated and on the further ground that the Supreme Court has held that in these removal proceedings it is not competent for the Commissioner to go into jurisdictional facts attending the finding of the indictment in order to determine whether that indictment is or is not sufficient. You will recall in the Green case the very vital question was attempted to be raised as to whether or not a proper Grand Jury was in session, which had a right to go into the indictment, which had a right to find an indictment.

Mr FULLER: That is an entirely different question. That point went to the constitution of the Grand Jury and attacked that body that was alleged to have found an indictment as being illegally constituted. We are not doing that.

513 The COMMISSIONER: You are trying to get around it.

Mr. FULLER: Not a bit of it. We are not raising any

question about the constitution of the Grand Jury, nor to look behind the door of the Grand Jury room at all, but we are trying to show to your Honor that these indictments, that there are no legal indictments on which this defendant can be removed.

Objection sustained. Exception taken.

Mr. GANS: Just let me point out to you what our theory is and then show why we think these particular questions—there are only two questions to be asked here and ought to be answered in the light of all the proof we have offered to you—our contention is, right or wrong, and whether it is right or wrong everybody, you want, sir, that it should be passed on by the court, and Mr. Dorr ought to want that it should be passed on by the court, are those right or wrong, of sufficient form. Under the laws of the District of Columbia a paper does not become an indictment, no matter what is done to it, unless prior to its filing a certain act has been done by the Grand Jury, a certain official act has been done by the Grand Jury, and certain other things have been done in the records of the court our contention is, and under the law which prevails in the District of Columbia——

814 The COMMISSIONER: You asked whether a presentment was filed and he said no when you first examined him as I understood it.

Mr. GANS: I don't think that has been brought out, sir. That is all we are driving at.

The WITNESS: In order to make the record clear, I stated that the fact that a presentment, if a presentment was filed, the fact would not be entered in the minutes of the court, but would be entered on the docket.

Mr. GANS: I just want to show the order of filing of the presentment and indictment, if he knows anything about it. My contention is that one has to be filed prior to it and I want to know if he knows anything about the order.

Mr. DORR: I would like an opportunity to state my objection. As I understand my friends, their contention is that there cannot be a valid indictment unless it is preceded by a presentment. That point the Government believes for the reasons previously stated and authorities previously cited is not well taken. What the defense is endeavoring to do here is exactly what the defense endeavored to do in the Green case, namely, go back of the indictment and hold that because some preliminary step required by the law was omitted the indictment was invalid. Now in the Green case there were certain formalities by law required on the finding of an indictment by the Grand Jury.

815 The COMMISSIONER: I am going to sustain the objection and give them an exception.

Mr. GANS: In order that we may get our record straight we will take your ruling without further argument.

Q. I will ask you whether you know the order in which the presentment No. 26088 and the alleged indictment containing the same number were presented together?

A. I haven't any distinct recollection about that one indictment

and presentment. I can testify as to the general order and what must have been observed in this case.

The COMMISSIONER: You can give that.

A. Yes, I know. I will say I know with that qualification.

The COMMISSIONER: I think that is proper.

Q. And that would apply of course to the alleged presentment and indictment No. 26089?

A. Yes sir.

Q. Now then, I will ask you to tell us in what order the presentment and indictment No. 25088 were presented to the court.

Mr. DORR: I object on the same grounds stated.

Objection sustained. Exception taken.

Q. And I ask you the same question with regard to No. 26086.

Same objection, ruling and exception.

Q. Now, Mr. Hawken, I ask you whether you know that there is any paper filed in your court at or about this time bearing
816 an endorsement as appearing to be by the endorsement an indictment against Theodore H. Price, Moses Haas and Edwin S. Holmes, Jr., for conspiracy—appearing by its endorsement?

Mr. DORR: I object on the ground that the record is the best evidence and speaks for itself.

Mr. GANS: I cannot have all the books of the District of Columbia here to show by the record that there isn't any such on the minutes.

Mr. DORR: And on the further ground that it is immaterial.

Objection sustained. Exception taken.

Q. I ask you whether on the records of your court there appears any presentment against Theodore H. Price, Moses Haas and Edwin S. Holmes, Jr., for the crime of conspiracy or otherwise; presentment, I say, and not indictment?

A. I will say none that I know of. There are none filed against Theodore H. Price, Moses Haas and Edwin S. Holmes, Jr., on May 29, 1908. I will say that positively. I will say within five years of that date, because I don't know what the records before that date show.

Q. Now then, I ask you Mr. Hawkens whether within five years there is any other presentment against Theodore H. Price and Moses Haas other than that of which Exhibit 6 is a photo-
817 graphic copy as appears by the records of your court?

A. No; there is not so far as I know.

Cross-examination by Mr. DORR:

Q. You are a deputy clerk of the Supreme Court of the District of Columbia?

A. I am a deputy clerk of the Supreme Court of the District of Columbia assigned to do duty in criminal court No. 1.

Q. Is it part of your duty to keep the records of the criminal branch?

A. Yes, it is, that is my sole duty.

Q. When an indictment is handed down do you receive any express order of the court to make a record?

A. No sir.

Q. You have simply a standing order in the court that you shall do it?

A. It is my duty to note the names of those against whom indictments are returned on the minutes of the court and to put on the docket the names of those against whom indictments are returned.

Q. There isn't any order given in the case of an individual indictment?

A. There is no order of the court made in the premises whatsoever.

Q. That is part of your duty, to make these entries: that is the understanding; there isn't any individual order in a given case?

A. There is never any individual order for doing that.

818 Q. And you are testifying as to records, photographic copies of which have been offered in evidence as kept by you?

A. Exactly. That is correct.

Q. Is it your understanding, or have the instructions you have received been to complete records of the names of persons indicted?

A. Yes; make a true record of the presentments and indictments.

Q. And if at any time you have in making a record omitted to make a complete record has your duty been complete?

Mr. Gass. I object to that. The witness is being asked as to his conclusions as to what he had to do.

Mr. Dorr. Based on his instructions given to him.

Mr. Gass. If there are any instructions that it is based on I will ask that that question be so framed that that be presented, and then I will make my objection to that, but he ought not to be permitted to give his conclusion as to what he had to do.

Question withdrawn.

Q. In making the record of persons indicted under No. 26088 you made the first entries on that record May 29, 1908?

A. On May 29th I copied the caption which was endorsed on the back of the indictment numbered as you have stated, 26088.

819 Q. You made that without inspecting the indictment, but merely from the endorsement on the indictment?

A. I followed my custom, which is to copy the names in the caption, because that is the only place where there is a caption and the names might appear.

Q. You look on the endorsement to see the names?

A. Yes.

Q. Did you subsequently examine the indictment itself?

Objected to.

Objection overruled; exception taken.

A. I did.

Q. And did you find the records as made — when did you do that?

A. According to my best recollection I made that examination on the 1st of June, 1908.

Q. That was the first court day after May 29th, the date on which the indictments were handed down?

A. Yes.

Q. After inspecting that indictment did you or did you not discover that the record you had made on May 29th was an incomplete record of the names of the persons indicted under 26088.

Mr. Gans: I object to that on the ground that it calls for a conclusion of this lay witness with respect to this whole question of law which is presented here.

The Commissioner: I will allow it and give you an exception.

820 Mr. Gans: Before you rule, just remember if he is not going to tell us what somebody told him to do, he is going to tell us what he found on the face of the papers.

The Commissioner: His attention happened to be called to it in some way but I don't want to know how or by whom. He saw an error had been made and he corrected it.

Mr. Gans: What can he tell us except that he looked at the face of the papers of the indictment and put in some names rather than those that the Grand Jury said ought to be put in.

Mr. Dorr: The Grand Jury doesn't say the caption shouldn't be put in the record; the Grand Jury says certain persons who are named in the indictment.

Mr. Gans: We except on the ground that it is irrelevant and immaterial, that it calls for a conclusion of the witness and also calls for the contents of a paper which he is said to have examined.

A. When I examined the body of the indictment I saw that the names contained therein varied with the names contained on the back thereof; that while the name of Holmes appeared in the body of the indictment that the name of Holmes did not appear on the back of the indictment, and that while the name of Peckham appeared on the back of the indictment the name of Peckham did not appear in the body of the indictment, whereupon I took my

821 red ink pen and drew a line through the name of Frederick A. Peckham seeing that the record showed that an indictment has been returned against him on that date, whereas it has not been, and inserted the name of Edwin S. Holmes, Jr., against whom the indictment had been returned in order.

Mr. Gans: I object to that and I ask to have it stricken out.

The Commissioner: You are now going into the conclusion of the Grand Jury. Just tell us about altering that again.

Mr. Gans: Will your Honor strike out the words: "Edwin S. Holmes, Jr., against whom the indictment had been returned?"

The Commissioner: Yes.

A. Which name appeared in the body of the indictment.

Q. And in doing that you were completing your record?

Mr. Gans: I object to that.

The Commissioner: I suppose he made the record in accordance with the facts.

Mr. Gaxs: Why should he testify to that conclusion. He has told us what he had done.

The Commissioner: He said in looking over the face of the indictment he found Holmes' name appeared on it and he put it in and made it in accordance with that paper.

A. And I did it in order to make it conform to the face
822 of the indictment.

The Commissioner: I will allow it and you can take an exception.

A. I did it in order to make the record conform to the face of the indictment.

Q. You are familiar with the records of the court, and are you familiar with the practice as to the making of presentments?

A. Yes; I know how indictments are returned to the court; I have had thousands of them returned to me—and copied on the record.

Q. Do you know whether it is the invariable practice in the District of Columbia to accompany an indictment with a presentment

Objected to. Objection sustained.

Q. This photograph now represents the record, exhibit 2 represent the record of indictment No. 26088 as it now appears in the Supreme Court of the District of Columbia?

A. Yes, and it has appeared since the date I mentioned.

Q. And Exhibit 3 of this date represents a copy of the minutes?

A. Represents a photographic copy; that is a photographic copy of page 330 of the criminal minutes No. 11 of the Supreme Court of the District of Columbia.

823 Q. As it now stands?

A. As it now stands.

Q. On June 1st you had some conversation with Mr. Lester, you say?

A. Yes.

Mr. Gaxs: Objected to.

Q. (Continuing:) Who represented the defendant Holmes, as to the records?

A. Yes, I did.

Mr. Gaxs: I object to the answer to the question.

Objection sustained.

Q. As soon as you found that you had made a mistake as to the defendant Peckham, was it then that you drew the ink line through the name of Frederick A. Peckham as appears on exhibits 2 and 3 of this date?

Mr. Gaxs: I object to that.

The Commissioner: Objection sustained, for the reason
821 that the witness already testified that his attention having been called to this indictment on June 1st he saw that the record did not correspond with the body of the indictment, and that

the endorsement did not correspond with the face of the indictment, and therefore he made these alterations as to additions and erasures.

The WITNESS: I didn't make an erasure. I struck it out with a line.

Q. The addition and the striking out of the name of Frederick A. Peckham?

Mr. FULLER: If your Honor please, in addition to the photographs which we have of these records, we offer in evidence certified copies of the presentment which correspond with exhibits 5, 4, 1, 3 and 2.

Mr. DOBB: I object on the grounds as objected to before, and on the additional ground that if they do not prove anything in addition they are clearly incompetent.

Mr. FULLER: It is merely a certified copy of the record just to make the proof complete.

Objection overruled.

Mr. DOBB: And I further object to the presentments on the same grounds as made before that the inaccuracy or absence of the
827 presentment is immaterial for the reasons assigned in the Supreme Court in the Green case.

Marked Exhibit 8 of this date.

Mr. FULLER: We also offer certified copies of the records showing certified copies of the papers photographed in Exhibits 6 and 7.

Same objection, and ruling.

Marked Exhibit 9 of this date.

Mr. FULLER: We offer the indictment found in the Southern District of New York against Theodore H. Price and Moses Haas on the 29th day of May, 1908, being No. 308, and the indictment against Theodore H. Price, Moses Haas and Edwin S. Holmes, Jr., found in the Southern District of New York on the 29th day of May, 1908, being No. 309.

We also offer in evidence the certified copies of the indictments found in the District of Columbia against Moses Haas, Edwin S. Holmes, Jr., and Frederick A. Peckham, being No. 24866, found August 20, 1905; also indictment No. 24,867 of August 22nd, 1905 and indictment No. 24907 returned October 2nd, 1905.

Mr. DOBB: I object to the offer as immaterial, incompetent and irrelevant.

826 Objection overruled.

Mr. GANS: Maybe Mr. Dobb will concede this, subject to the materiality, that on the New York indictments admitted in evidence Mr. Price has been arraigned and is now under bail.

Mr. DOBB: Yes, I concede that, and make the same objection also as to its materiality.

(Endorsed:) In the Circuit Court of the United States, for the Southern District of New York. Moses Haas, Petitioner, vs. William Henkel, United States Marshal in and for the Southern District of New York, and John V. Shields, United States Commissioner for the

Southern District of New York, Respondents. Affidavit and
827 Notice. Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y. Max D. Steuer, 115 Broadway, New York City, Attorneys for Petitioner. U. S. Circuit Court, Southern District of New York, Filed Jan. 7, 1909. John A. Shields, Clerk.

828 United States Circuit Court, Southern District of New York.

MOSES HAAS, Petitioner,
against
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York.

Nash Rockwood and Max D. Steuer for the Petitioner.
Henry L. Stimson, U. S. Attorney, for the Defendants.
De Lancey Nicoll, Howard S. Gans and Thomas Staples Fuller filed a brief as *amici curiæ*.

WARD, *Circuit Judge:*

May 29, 1908 four indictments were presented to the Supreme Court of the District of Columbia as follows:

No. 26,087 against Moses Haas and Frederick A. Peckham for conspiring at the District of Columbia May 31, 1905 to commit an offense against the United States, viz: Promising money to Edwin S. Holmes, Jr., associate statistician of the Bureau of Statistics of the Department of Agriculture and an officer of or a person acting on behalf of the United States in an official function, to induce him in violation of his lawful duty established by the usage of the Department to divulge the contents of the cotton crop report for June, 1905 in advance of its official publication.

No. 26,089 is a similar indictment against Moses Haas and Theodore H. Price.

No. 26,086 against Moses Haas, Edwin S. Holmes, Jr. and Frederick A. Peckham for unlawfully conspiring, May 31, 1905
829 at the District of Columbia to defraud the United States of its governmental function of publishing the cotton crop report for June, 1905. First and second counts, by using the information therein contained before its official publication for the purpose of speculating in cotton. Fifth count, the same charge in the case of each monthly report to be thereafter published. Third and seventh counts, by procuring Holmes to make an untrue report stating that a greater number of acres of land had been planted than had in fact been planted.

On the same day exactly the same indictments were found in the United States Circuit Court for the Southern District of New York, charging the same offenses to have been there committed and by the same parties.

The Government instituted proceedings under Sec. 1014 U. S. Rev. Stat. to remove Haas for trial to the District of Columbia under

the indictments presented there. The provisions of law involved are as follows:

"SEC. 5440. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not more than two years."

SEC. 5451. Every person who promises, offers, or gives, or causes or procures to be promised, offered or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place
830 of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section."

U. S. Rev. Stat.

The Commissioner after a hearing directed Haas to be committed to await the action of the District Judge in respect to the removal. Haas thereupon petitioned for writs of habeas corpus and certiorari out of this Court so that the legality of his detention might be inquired into. The case has been elaborately argued before me on the petition and the returns to the writs and the proceedings before the Commissioner.

There is a preliminary question to be considered, viz: The application of the petitioner to have certain testimony with photographic exhibits, which has been taken in another proceeding for the removal of Price for trial to the District of Columbia under indictment No. 26,088 certified into and made a part of the record in this proceeding. I think such testimony, if admissible, should be taken anew and not certified in the way proposed. The U. S. Attorney, however, waives this objection and opposes the application on the ground that the returns to the petition have not been traversed and only issues of law have been raised. I think this objection good. Still as I could permit the petitioner to traverse the return to the writ of habeas corpus if the testimony in question is material, Secs. 750 and 761, U. S. Rev. Stat., *Storti v. Massachusetts*, 183 U. S. 138, 140, I may add that I do not think it so. The testimony in question shows that though indictment No. 26,088 was found a true bill

against Price, Haas and Holmes and was so endorsed by the
831 foreman of the Grand Jury. The caption on the back read "U. S. against Theodore H. Price, Moses Haas and Frederick A. Peckham." The presentment was filled up as against the same parties. The clerk of the court in making his entries in the docket and in the court minutes followed the caption on the back of the indictment. Discovering the discrepancy he, of his own motion, struck out the name Frederick A. Peckham in the docket and in the court minutes and inserted the name Edwin S. Holmes, Jr. in accordance with the body of the bill. The caption is no part of the bill, *United States v. Williams*, 168 U. S. 382, and the mistake in making it does not alter the fact that the indictment is against Price, Haas and Holmes and not against Price, Haas and Peckham. At all events, these objections concern principally the law and practice in force in the District of Columbia and are fitter to be determined by the courts there than by the Commissioner or by this Court upon the question of probable cause for the petitioner's commitment. The application is accordingly denied.

Many objections have been made to the sufficiency of the indictments which though they might be good in the trial court on a motion to quash or in arrest of judgment after conviction are of a kind which have been held to be fitter for disposition by the trial court than by the Commissioner, *Greene v. Henkel*, 183 U. S. 249; *in re Benson*, 130 F. R. 186; *Benson v. Henkel*, 198 U. S. 1. They will therefore not be further discussed.

832 But as the petitioner admitted his identity with the party named in the indictments there was left for consideration by the Commissioner the questions whether the indictments did charge offenses against the United States, and if they did whether those offenses were triable in the District of Columbia. *Tinsley v. Treat*, 205 U. S. 20. If the Commissioner ought to have decided either of these questions in the negative he should have discharged the petitioner.

The petitioner contends that the Commissioner was bound to take notice of the fact that the same offenses are charged to have been committed at the same time by the same persons in two different places, viz: The Washington indictments charging them to have been committed in Washington and the New York indictments charging them to have been committed in the Southern District of New York, and because they could have been committed in one place only it was impossible to say in which district he was triable and therefore that he should have been discharged.

833 No doubt if these inconsistent allegations were charged in a single indictment it would be impossible to say whether under that indictment the petitioner was triable in the District of Columbia or *the in* Southern District of New York and therefore should be discharged, *United States v. Macy*, 122 F. R. 964. But the Washington indictments and the New York indictments are, considered separately, not open to this objection and even if they are considered together, mutually exclusive, it does not follow that the

petitioner should be tried on neither, because there is nothing to show which set states the facts correctly.

The petitioner next objects that the indictments set out no offense against the United States. The Department of Agriculture was originally established by the Act of March 15, 1862, 12 Stat. at large, 387, and it was made an executive department under the supervision of the Secretary of Agriculture by Act of February 9, 1899, 25 Stat. at Large, 659. Its purpose was to diffuse useful information connected with agriculture, to procure and distribute new and valuable seeds and plants, to acquire and preserve information concerning agriculture by the collection of statistics and to make an annual report to the President and to Congress. The Department of its own motion began to make monthly crop reports between June and December of every year. Doubtless the Government established the Department in the exercise of a governmental function, and the fraud contemplated by Sec. 5440 U. S. Rev. Stat. may be against the rights of the Government as well as against its property. *Curley v. United States*, 130 F. R. 9. But no provision of law requires the statistics collected to be kept secret until the official publica-
834 tion of the monthly reports, and I cannot see that the United States was in any respect defrauded by the publication of these statistics to individuals before the official publication to the country at large. There is no ground for presuming that Congress intended to prevent individuals obtaining information in advance of its general publication. Such persons would, of course, have an advantage in trading in cotton with others who had not that information, but I do not see that the United States would be in any way defrauded either of its property or its rights. We should not be induced by our contempt for or our indignation at such conduct as is set forth in the indictments to turn it into a crime if it is not one. Those were the views expressed by Holt, J. in *United States v. Haas*, unreported, in the case of a similar indictment found in 1905.

On the other hand as the Government evidently intended to supply the public with correct information, its whole purpose would not only be prevented but actually reversed if the Department issued incorrect reports. A conspiracy to cause incorrect monthly reports to be published would defraud the United States because it would change its department from an agency to enlighten the public into an agency to mislead it. It would be as if wreckers in combination with persons connected with the location of channel buoys or with lighthouses were to combine to move the buoys or extinguish the lights. Therefore the third and seventh counts of indictment No. 26,088 which charge the petitioner with being a party to such a conspiracy in my opinion charge him with conspiracy to defraud the United States, which is made a crime by Sec. 5440 U. S. Rev. Stat.

835 I think the indictments No. 26,087 and 26,089 for bribery also charge offenses against the United States. Sec. 161 U. S. Rev. Stat. provides: "The head of each department is authorized to prescribe regulations not inconsistent with law for the government of his department, the conduct of its officers and clerks, the distribu-

tion and performance of its business and the custody, use and preservation of the records, papers and property appertaining to it." Such regulations, as held in *United States v. Macdaniel*, 7 Pet. 14, need not be in the form of writing but may consist of established usages and practices which have become a kind of common law of the department. In this particular case regulations had been formally promulgated March 20, 1897 and December 19, 1901 by the Secretary of the Department forbidding employees to give out any statement whatever relating to the business of the Department without the approval of the chief of their bureau and the indictments allege that secrecy was imposed upon all employees by the established usage and practice of the Department.

Sec. 5451 U. S. Rev. Stat. makes it a crime to bribe any person acting for the United States in any official function to induce him to do or omit to do any act in violation of his lawful duty. The words lawful duty are not to be considered as duty imposed by law or statute but as duty lawfully imposed in any way. Hough, J. in this District, so held in the *Matter of Haas*, 163 F. R. 908. The usage and the regulations in question were intended for the government of the Department, were entirely consistent with law and, as the charges in the indictment show, with the public welfare. They were therefore lawfully imposed on Holmes and it was his duty to obey them.

836 Although his failure to do so may not be a crime because no statute has made it so, still Sec. 5451 does make it a crime for anyone by the payment of money, etc., to induce him to violate this lawful duty. Whether he was an officer or was acting in an official capacity or was violating a lawful duty when he gave correct statistics to Haas and his co-defendants or when he gave incorrect statistics to the public are questions fitter for the decision of the trial court than of the Commissioner. *Benson v. Henkel*, 198 U. S. 1. The Commissioner had probable cause for commitment and the writ is therefore discharged and the petitioner remanded.

H. G. WARD, *U. S. C. J.*

January 7, 1909.

Endorsed: Circuit Court of the United States for the Southern District of New York. Moses Haas against William Henkel, U. S. Marshal and John A. Shields, U. S. Commissioner. Decision. Ward C. J. U. S. Circuit Court Southern District of N. Y., Filed Jan. 7, 1909. John A. Shields, Clerk.

837 United States Circuit Court, Southern District of New York.

MOSES HAAS
against
WILLIAM HENKEL, U. S. Marshal, and JOHN A. SHIELDS, U. S. Commissioner.

FREDERICK A. PECKHAM
against
WILLIAM HENKEL, U. S. Marshal, and JOHN A. SHIELDS, U. S. Commissioner.

Nash Rockwood and Max D. Steuer for Petitioners.
Henry L. Stimson, U. S. Attorney, Attorney for Henkel and Shields.

WARD, *Circuit Judge:*

The petitioners Haas and Peckham having been committed under U. S. Rev. Stat. 1014 by the Commissioner to await removal proceedings before the District Judge, have upon habeas corpus been remanded. Being about to appeal to the Supreme Court, they ask for a supersedeas and that they may be admitted to bail pending appeal. I think I have the discretion to do both under Supreme Court Rules 31, subdivision 2, and 36, subdivision 2. The United States Attorney objects that the habeas corpus should not have been taken out until after the District Judge had passed upon the question of removal. The petitioners are following the practice in the case of *Benson v. Henkel*, 198 U. S. 1, in which the petitioner under the same circumstances was allowed a supersedeas and was admitted to bail.

838 The attorneys for the petitioner state that in the following cases where after orders of removal under Sec. 1014, writs of habeas corpus had been discharged, the defendants were admitted to bail pending an appeal: *Beavers v. Henkel*, 194 U. S. 73; *Hyde v. Shine*, 199 U. S. 62; *Price v. McCarty*, 83 F. R. 830; 89 F. R. 84; *Tinsley v. Treat*, 205 U. S. 20; *Beavers v. Haubert*, 198 U. S. 77, and this is not contradicted in the brief of the U. S. Attorney.

Justice Gray in *Hudson v. Parker*, 156 U. S. 277, 285, said:

"The statutes of the United States have been framed upon the theory that a person accused of crime shall not until he has finally been adjudged guilty in the court of last resort be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail not only after arrest and before trial, but after conviction and pending a writ of error."

It may be that this language was *obiter* but it was not disapproved by his brethren, the views of those who dissented being entirely consistent with it. Justice Gray was speaking of a defendant who had been actually convicted and it is not necessary for me to go so far in granting the request of the petitioners as I feel I should do, they being merely charged with crime.

If this practice causes prejudicial delay in criminal prosecutions, it results from the provisions of Sec. 1014, U. S. Rev. Stat., and relief should be sought, not from the courts, but from Congress, as Attorney Generals Moody and Bonaparte have suggested in their annual reports, 1905-1907. All the orders may be settled on Monday next at 10 A. M.

H. G. WARD, *U. S. C. J.*

January 15, 1909.

839 Endorsed: Circuit Court of the United States for the Southern District of New York. Moses Haas against William Henkel, and John A. Shields; Frederick A. Peckham against The Same. Opinion. Ward, C. J. U. S. Circuit Court, Southern District of N. Y., Filed Jan. 15, 1909. John A. Shields, Clerk.

840 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Louis Bennett, being duly sworn deposes and says: that he is in the employ of Henry L. Stimson, United States Attorney for the Southern District of New York, that on the 7th day of January, in the year of our Lord One thousand Nine hundred and nine, he served a copy of the within proposed order and notice of settlement on Nash Rockwood, attorney for the plaintiff in this action, by leaving the same with the person in charge of his office at Number 35 Nassau Street, New York City, Manhattan.

LOUIS BENNETT.

Sworn to before me this 8th day of January 1909.

FREDERICK L. CAMPBELL,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

841 United States Circuit Court, Southern District of New York.

MOSES HAAS, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York.

SIR: Please take notice that the within order will be presented for settlement to the Honorable Henry G. Ward, United States Circuit Judge, at his chambers at 11 A. M. on Saturday, January 9, 1909.

Dated: New York, January 7, 1909.

HENRY L. STIMSON,
United States Attorney for the Southern District of New York, Attorney for Defendant.

Room 50, P. O. Building, Borough of Manhattan, City of New York.

To: Nash Rockwood, Esq., Attorney for Moses Haas, 35 Nassau Street, New York City.

842 At a Stated Term of the United States Circuit Court for the Southern District of New York in the Second Circuit held at the United States Court House and Post Office Building in the Southern District of New York on the eighteenth day of January, 1909.

Present: Hon. Henry G. Ward, Circuit Judge.

MOSES HAAS, Petitioner,

vs.

WILLIAM HENKEL, United States Marshal in and for the Southern District of New York.

A writ of habeas corpus having been issued herein upon the 30th day of November, 1908, upon a petition filed herein on said 30th day of November, 1908, directed to William Henkel, Marshal of the United States for the Southern District of New York as the person having the custody of the above named Moses Haas commanding the said William Henkel as said Marshal to produce the body of the said Moses Haas before the said United States Circuit Court for the Southern District of New York at a Term thereof to be held at the United States Court and Post Office Building, Borough of Manhattan, City of New York in said Southern District on the fourth day of December, 1908, and the said Moses Haas having been produced at that time before said Court by said William Henkel and a return to said writ of habeas corpus having been made and filed by said William Henkel as such United States Marshal as aforesaid, and a traverse having been filed to said return by said Moses Haas and a writ of certiorari having been issued herein upon

843 said 30th day of November, 1908, directed to John A. Shields, United States Commissioner for the Southern District of New York, commanding him to certify to said Circuit Court on said fourth day of December, 1908, the record of the proceedings had before him in the matter of the removal of Moses Haas to the District of Columbia, and said John A. Shields, as United States Commissioner for the Southern District of New York having made return to said writ of certiorari on said fourth day of December, 1908, and said writ of habeas corpus and said return and said traverse to said return having come on for hearing upon said fourth day of December, 1908, and argument having been made thereon by Nash Rockwood, Esq., and Max Steuer, Esq., of counsel for the petitioner Moses Haas in support of said writ and by G. H. Dorr, Esq., Assistant United States Attorney, in opposition thereto, and Moses Haas having thereafter made a motion on the twenty-first day of December 1908, upon an affidavit verified the twenty-first day of December, 1908, to add certain papers and exhibits to the record herein, and said motion having come on to be heard on the twenty-first day of December, 1908, and having been argued by Nash Rockwood, Esq., and Max Steuer, Esq., of counsel for the petitioner Moses Haas and by Thomas Staples Fuller, Esq., as amicus curiæ, in support of said motion, and G. H. Dorr, Esq., Assistant United States Attorney, in opposition thereto,

Now, on reading and filing the said writ of habeas corpus and said petition of said Moses Haas, the said return of said William Henkel to said writ of habeas corpus, and the said traverse to said return by said Moses Haas, and said return by said John A. Shields to said writ of certiorari, and said motion, affidavit and papers attached thereto of said Moses Haas, and due deliberation having been had thereon, and on motion of Henry L. Stimson
844 United States Attorney for the Southern District of New York, it is

Ordered that said motion to add to the record herein be and hereby is denied, and it is further

Ordered that said motion on said writ of habeas corpus to discharge the said Moses Haas be and it hereby is in all respects denied, and that said Moses Haas be and he hereby is remanded to the custody and control of said William Henkel, United States Marshal for the Southern District of New York.

H. G. WARD,
U. S. C. J.

(Endorsed:) U. S. Circuit Court, Southern District of New York.—Moses Haas vs. William Henkel, U. S. Marshal in and for the Southern District of New York.—Order and Notice of Settlement.—Henry L. Stimson, United States Attorney, Attorney for U. S.—U. S. Circuit Court, Southern District N. Y. Filed Jan. 18, 1909. John A. Shields, Clerk.

845 In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of MOSES HAAS for Writs of Habeas Corpus and Certiorari.

MOSES HAAS, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and JOHN A. SHIELDS, United States Commissioner for the Southern District of New York.

The petition of the above-named Moses Haas for an order allowing an appeal to the Supreme Court of the United States from the final order hereinbefore entered in this action respectfully shows:

1. That the petitioner and appellant above-named is a resident of the City of New York, in the Southern District of New York, United States of America, and was such resident at all of the times hereinafter mentioned.

2. The petitioner and appellant above-named feeling himself aggrieved by the final order heretofore made and entered by this Court on the 18 day of January, 1909, whereby it was ordered that the application for a writ of habeas corpus directed to William Henkel, United States Marshal in and for the Southern District of New York requiring the said Marshal to bring and have your peti-

tioner before this Court and that his application for a writ of certiorari, directed to the Hon. John A. Shields, United States Commissioner for the Southern District of New York, command-
846 ing him to return all proceedings against your petitioner to the said Circuit Court for the Southern District of New York forthwith for such action as might be proper in the premises, being denied, your petitioner's writ of habeas corpus discharged, and your petitioner remanded; now comes by Nash Rockwood and Max D. Steuer, his solicitors and counsel, and petitions the Court for an order allowing him to prosecute an appeal from said final order to the Supreme Court of the United States under and according to the laws of the United States in that behalf made.

Your petitioner is advised by counsel that there are grave doubts as to whether the proceedings referred to in the petition and in the affidavits subsequently filed in said Circuit Court on a motion to add to the record therein have not infringed the constitutional rights of your petitioner, and whether the commitment of your petitioner and the restraint of his person, referred to in said petition, are not without authority of law, and whether the said United States Commissioner before whom your petitioner was arraigned as set forth in said petition, had jurisdiction either to require bail of your petitioner or to commit your petitioner in default thereof; and is further advised by his said counsel that they are of the opinion that your petitioner's constitutional rights have been infringed by the said proceedings and that his detention under and by virtue of the said commitment issued by the said Commissioner, as referred to in the said petition, and the denial of his discharge upon said writs of habeas corpus and certiorari, are all in violation of his rights under the Constitution of the United States, and your petitioner desires in good faith to submit the constitutional questions
847 and such other questions as are pertinent thereto or involved therein to the Supreme Court of the United States for their determination.

And for the relief asked herein your petitioner will ever pray

(S'g'd) MOSES HAAS,
Petitioner.

NASH ROCKWOOD,
378 *Broadway, Saratoga Springs, N. Y.*
MAX D. STEUER,
115 *Broadway, Borough of Manhattan,*
City of New York, N. Y.,
Attorneys for Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Moses Haas, being duly sworn, says that he is the petitioner above-named; that the foregoing petition of his own knowledge is true, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(S'g'd) MOSES HAAS

Subscribed and sworn to before me this 18th day of January, 1909.

(S'g'd) H. G. WARD,
U. S. C. J.

848 The foregoing petition on appeal is granted and it is

Ordered, that pending the determination of said appeal and until the further order of this Court, after decision thereof, all proceedings herein and all proceedings for the removal of said Moses Haas to the District of Columbia, under and by virtue of the indictment referred to in the petition for a writ of habeas corpus herein, be and they are hereby stayed.

Further ordered, that pending said appeal said defendant Moses Haas be released on bail to await the decision and determination of said appeal.

Supersedeas bond fixed at Five thousand Dollars ($5000.00).

Taken in open Court this 18th day of January, 1909.

(Signed) H. G. WARD,
Circuit Court Judge.

Endorsed: In the Circuit Court of the United States for the Southern District of New York. Moses Haas, Petitioner, vs. William Henkel, United States Marshal, in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York. Petition for order allowing appeal, with order annexed allowing same and staying proceedings. Nash Rockwood, Saratoga Springs, N. Y., Max D. Steuer, 115 Broadway, Borough of Manhattan, New York City, N. Y. U. S. Circuit Court, Southern District of N. Y., Filed Jan. 18, 1909, John A. Shields, Clerk.

849 In the Supreme Court of the United States.

In the Matter of the Petition of MOSES HAAS for Writs of Habeas Corpus and Certiorari.

MOSES HAAS, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York.

Comes now the petitioner, Moses Haas, and files the following Assignment of Errors upon which he will rely upon his prosecution of the appeal from the final order made in the Circuit Court of the United States for the Southern District of New York on the 18th day of January, 1909, in the above entitled cause, dismissing the Writs of Habeas Corpus and Certiorari and remanding your petitioner:

1. That the said Court erred in dismissing the petitioner's Writs

of Habeas Corpus and Certiorari and in remanding him to the custody of the Marshal.

2. That the said Court erred in refusing the discharge of said petitioner.

3. That the said Court erred in holding that the restraint of the petitioner's liberty is legal.

4. That the said Court erred in holding that the restraint of the petitioner is not a violation of his constitutional rights, under the Constitution of the United States.

5. That the said Court erred in holding that the alleged
850 indictments in the said record contained, or either of them, set forth a crime or offense against the laws of the United States.

6. That the said Court erred in holding and deciding that any of the counts of the indictments charged a conspiracy to defraud the United States within the meaning of section 5440 of the Revised Statutes.

7. That the said Court erred in holding and deciding that any of the counts of any of the indictments charged a conspiracy to commit the offense against the United States defined by section 5451 of the Revised Statutes.

8. That the said Court erred in holding that any of the indictments charged the offense of bribery.

9. That the said Court erred in holding that any of the indictments charged the offense of conspiring to promise, offer and give to an officer of the United States and a person acting for and in behalf of the United States in an official function, under and by virtue of a certain department and office of the government, a sum of money to induce him to do acts in violation of his lawful duty.

10. That the said Court erred in holding that the said alleged indictments, or either of them, were properly admitted in evidence before the Honorable Commissioner to prove that there was probable cause to believe that your petitioner was guilty of a crime or offense against the laws of the United States.

11. That the said Court erred in declining to hold and
851 decide that the said Commissioner was without jurisdiction to commit your petitioner for removal to the District of Columbia, for the reason that said petitioner was under indictment in the Southern District of New York for the same offenses charged against him by the indictments found in the District of Columbia, as disclosed by the record herein; it appearing that your petitioner had been apprehended upon said New York indictments and had been admitted to bail; that he had demurred to the sufficiency of the indictments and that said demurrers had been overruled.

12. That the said Court erred in declining to find and decide that your petitioner was legally in custody in the Southern District of New York, pursuant to indictments found in said district, awaiting trial for the same offenses for which proceedings were instituted before said Commissioner to effect the removal of your petitioner to the District of Columbia.

13. That the said Court erred in declining to hold and decide that

the alleged crimes set forth in the four indictments found in the District of Columbia are, and each them is, barred by the Statute of Limitations.

14. That the said Court erred in declining to hold and decide that Holmes was not an officer of the United States within the meaning of that term, as used in section 5451 and all the other sections of the Revised Statutes of the United States pertinent to the charges attempted to be set forth.

15. That the said Court erred in holding that the sufficiency of the indictment is to be determined by the court in
852 which it was found, to-wit, the Supreme Court of the District of Columbia, and is not a matter of inquiry in removal proceedings.

16. That the said Court erred in declining to hold and decide that the indictments relating to Section 5451 of the Revised Statutes do not sufficiently charge the violation of that Section.

17. That the said Court erred in declining to hold and decide that no count of any of the indictments sufficiently charges any offense against the United States, and that since the application for removal is based on the indictments alone, and no evidence was offered to sustain them, that the Commissioner was not vested with jurisdiction to commit your petitioner for removal.

18. That the Court erred in declining to hold and decide that the alleged crime of conspiracy to bribe did not merge in the completed offense.

19. That the said Court erred in declining to hold and decide that the preliminary complaint, upon which the warrant was issued against your petitioner, was insufficient, it appearing that the same was upon information and belief, and not upon the positive knowledge of the affiant; and also that a bench warrant from the District of Columbia was not filed with the said complaint at the time that said warrant was issued.

20. That the said Court erred in declining to hold and decide that the previous decision of United States Judge Holt, discharging the defendant Haas, was technically *res adjudicata*, and should be held to be conclusive upon the questions involved before said Court.

853 21. That the said Court erred in refusing and denying the application and motion of your petitioner to have certain testimony and photographic exhibits relating to indictment No. 26088 made a part of the record before said Circuit Court of the United States in this proceeding.

22. That the said Court erred in declining to hold and decide that no one of the papers admitted in evidence as indictments had any legal inception.

23. That the said Court erred in holding and deciding that any one of the papers admitted in evidence as indictments was proved to be a valid or legal indictment, and that any one of the said papers furnished any evidence of probable cause to believe the petitioner guilty of a crime, or was admissible in evidence in the proceeding.

24. That the said Court erred in not holding and deciding that your petitioner is unlawfully restrained of his liberty.

25. That the said Court erred in not holding and deciding that

your petitioner is deprived of his liberty without due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

26. That the said Court erred in holding that the commitment issued by the said Commissioner was not without legal authority or jurisdiction of any kind, and was not utterly void and ineffectual, and that the petitioner's detention and imprisonment thereunder was not in violation of the Constitution of the United States and in violation of his privileges and immunities thereunder.

854 27. That the said Court erred in declining to hold and decide that your petitioner's detention was in violation of Article V of the Amendments to the Constitution of the United States, in that the said United States Commissioner had no jurisdiction to order the arrest and commitment of your petitioner, and in that your petitioner is held to answer for a crime without any sufficient or valid indictment of a grand jury.

28. That the said Court erred in declining to hold and decide that the restraint of your petitioner is in violation of Article IV of the Amendments to the Constitution of the United States, because it appears from the indictment upon which the warrant in this case was issued that it was wholly void.

29. That the said Court erred in failing to hold and decide that the restraint of your petitioner is in violation of the provisions of Article VI of the Amendments to the Constitution of the United States, for the reason that upon the proof before the Commissioner and before the said Court, it was shown that the offenses charged in the indictment were not committed in the District of Columbia.

30. That the said Court committed other errors appearing on the record.

Wherefore, your petitioner prays that the order dismissing the said Writs of Habeas Corpus and Certiorari and remanding your petitioner to the custody of the United States Marshal be reversed and that your petitioner be discharged from custody.

MOSES HAAS,
Petitioner.

NASH ROCKWOOD,
MAX D. STEUER,
Attorneys for Petitioner.

855 Endorsed: In the Supreme Court of the United States. Moses Haas, Petitioner, vs. William Henkel, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York. Assignment of errors. Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y. Max D. Steuer, 115 Broadway, Borough of Manhattan, New York City, N. Y. U. S. Circuit Court, Southern District of N. Y. Filed Jan. 18, 1909. John A. Shields, Clerk.

856 In the Supreme Court of the United States.

UNITED STATES
vs.
MOSES HAAS.

Bond on Appeal.

UNITED STATES OF AMERICA,
Southern District of New York:

Be it remembered that on the 18th day of January, 1909, before me, John A. Shields, one of the Commissioners of the District Court of the United States for Southern District of New York, personally came Moses Haas, as principal and Martin Engel as surety, and severally acknowledged themselves to owe to the United States of America, that is to say: the said Moses Haas the sum of Five thousand Dollars ($5000.), and the said —— —— the sum of Five thousand Dollars ($5000.), separately to be levied and made on their respective goods, chattels, lands and tenements to the United States if default shall be made in the condition following, to-wit:

Whereas, the said Moses Haas was detained in the custody of William Henkel as United States Marshal for the Southern District of New York, under commitment issued by the Hon. John A. Shields, Commissioner for the Southern District of New
857 York, in a proceeding to secure the removal of the said Moses Haas to the District of Columbia on the 30th day of November, 1908; and

Whereas, the said Moses Haas made an application to the United States Circuit Court before Hon. Henry G. Ward, Circuit Judge, on the said 30th day of November, 1908, for a writ of habeas corpus directed to said William Henkel, United States Marshal in and for the Southern District of New York, requiring said Marshal to bring and have said Moses Haas before said Court, together with the true cause of his detention; and

Whereas, the said Moses Haas made an application to the United States Circuit Court before Hon. Henry G. Ward, on the said 30th day of November, 1908, for a writ of certiorari directed to the Hon. John A. Shields, United States Commissioner for the Southern District of New York, in aid of the said writ of habeas corpus, commanding that he return all proceedings against your petitioner to the Circuit Court herewith for such action as might be proper in the premises; and

Whereas, on the 18th day of January, 1909, the said Court did make its final order dismissing said writs of habeas corpus and certiorari, and remanding said Moses Haas; and

Whereas, the said Moses Haas has appealed from the said final order to the Supreme Court of the United States; and

Whereas, the said Hon. Henry G. Ward, United States Circuit Judge, has duly allowed said appeal and has ordered that pending

said appeal Moses Haas be released on bail, and has fixed the amount of the same at Five Thousand Dollars ($5000.); and

Whereas, it is ordered that the said Moses Haas be en-
858 larged upon bail in the sum of Five Thousand Dollars ($5000.) for his appearance to answer the exigency and determination of said appeal and to personally abide the final decision and determination of the said Supreme Court of the United States in that behalf:

Now therefore, the condition of this obligation is such that if the said Moses Haas shall duly appear in the United States Circuit Court for the Southern District of New York to answer the exigency and determination of said appeal and personally abide the final decision and determination of the said Supreme Court of the United States and the said Circuit Court of the United States upon the mandate of the said Supreme Court of the United States, and obey and abide the said orders of the said Circuit Court of the United States and not depart without leave, upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void; otherwise to remain in full force and virtue.

(Signed) MOSES HAAS. [L. S.]
MARTIN ENGEL. [L. S.]

Taken and acknowledged before me the day and year first above written.

(Signed) JOHN A. SHIELDS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.:*

Martin Engel, being duly sworn, says that he is worth the sum of Ten thousand Dollars ($10,000) over and above his just
859 debts and liabilities.

(Signed) MARTIN ENGEL.

Sworn to before me this 18th day of January, 1909.

(Signed) JOHN A. SHIELDS,
U. S. Commissioner.

Recognizance approved as to form and sufficiency.
Dated January 18th, 1909.

(Signed) JOHN A. SHIELDS,
United States Commissioner.

Endorsed: In the Supreme Court of the United States. United States vs. Moses Haas. Bond on Appeal. Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y., Max D. Steuer, 115 Broadway, Borough of Manhattan, New York City, N. Y. Bail in $5,000 to be taken by Commissioner, H. G. Ward, U. S. C. J., Feb'y 18, 09. U. S. Circuit Court, Southern District of N. Y. Filed Jan. 12, 1909. John A. Shields, Clerk.

860 In the Supreme Court of the United States.

In the Matter of the Petition of Moses Haas for Writs of Habeas Corpus and Certiorari.

Moses Haas, Petitioner,
vs.
William Henkel, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York.

Know all men by these presents, That we, Moses Haas, as principal, and Martin Engel, as surety, are held and firmly bound unto the United States of America for the full and just sum of Two Hundred and Fifty Dollars ($250.00) to be paid to the said United States. For which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 18th day of January, in the year One thousand Nine hundred and nine.

Whereas, lately, to-wit: on the 18th day of January, 1909, at a Circuit Court of the United States in and for the Southern District of New York, in a proceeding therein pending, an order was entered dismissing writs of habeas corpus and certiorari procured by the above named petitioner, Moses Haas; and said petitioner has duly obtained an appeal from said order to the Supreme Court of the United States and has filed a copy thereof in the Clerk's office
861 of the said Circuit Court for the review of the same:

Now, the condition of the above obligation is such that if the said petitioner, Moses Haas, shall prosecute said appeal to effect, and shall answer all costs if he shall fail to make said appeal good, then this obligation shall be void, otherwise to remain in full force and effect.

Sealed and delivered, and taken and acknowledged this 18th day of January, in the year One Thousand Nine Hundred and Nine, before me, John A. Shields, United States Commissioner for the Southern District of New York.

(Sgd.) MOSES HAAS. [L. S.]
(Sgd.) MARTIN ENGEL. [L. S.]

In the presence of
JOHN A. SHIELDS,
U. S. Commissioner.

United States of America,
Southern District of New York, ss:

Moses Haas and Martin Engel, each being duly sworn, for himself says: That he is worth more than the sum of Five Hundred Dollars ($500.00) over and above all his just debts and liabilities.

MOSES HAAS.
MARTIN ENGEL.

Sworn to before me this 18th day of January, 1909.

JOHN A. SHIELDS,
U. S. Commissioner for the Southern District of New York.

862 Approved as to form, amount and sufficiency.
Dated, January 18th, 1909.

JOHN A. SHIELDS,
United States Commissioner.

Endorsed: In the Supreme Court of the United States. Moses Haas, Petitioner, vs. William Henkel, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner, for the Southern District of New York. Bond for costs. Bond for Costs in $250, to be taken by Commissioner. H. G. Ward, U. S. C. J., Feb'y 18 09. U. S. Circuit Court, Southern District of N. Y. Filed Jan. 18, 1909. John A. Shields, Clerk.

863 In the Supreme Court of the United States.

In the Matter of the Petition of MOSES HAAS for Writs of Habeas Corpus and Certiorari.

MOSES HAAS, Petitioner,
vs.
WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA, *ss.*:

The President of the United States to the Hon. Henry L. Stimson, United States District Attorney for the Southern District of New York; John A. Shields, Clerk of the United States Circuit Court for the Southern District of New York; William Henkel, United States Marshal in and for the Southern District of New York; John A. Shields, Esq., United States Commissioner for the Southern District of New York, and Thomas Alexander, Clerk of the United States District Court for the Southern District of New York:

You and each of you are hereby cited and admonished to be at the Supreme Court of the United States at the City of Washington within thirty days from the date of this writ, pursuant to the appeal duly allowed by the Circuit Court for the Southern District of New York and filed in the Clerk's office of said Court on the 18 day of January, 1909, in a certain case entitled

864 " In the Circuit Court of the United States for the Southern District of New York.

" In the Matter of the Petition of MOSES HAAS for Writs of Habeas Corpus and Certiorari.

" MOSES HAAS, Petitioner,
vs.
" WILLIAM HENKEL, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York.

to show cause, if any, why the final order of the said Circuit Court rendered against said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that respect.

Witness Honorable Henry G. Ward, Judge of the Circuit Court of the United States, this 18" day of January, 1909.

H. G. WARD.
Justice of the Circuit Court of the United States.

865 [Endorsed:] 1438. E. & A. C. 2871. In the Supreme Court of the United States. Moses Haas, Petitioner, vs William Henkel, United States Marshal, in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York. Original. Citation on Appeal. Nash Rockwood, 378 Broadway, Saratoga Springs, N. Y. Max D. Steuer, 115 Broadway, Borough of Manhattan, New York City, N. Y. U. S. Circuit Court for the Southern District of New York. Filed Jan. 18, 1909. John A. Shields, Clerk. Copy Received January 18, 1909. Henry L. Stimson, U. S. Attorney.

866 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing pages, numbered from one to 865 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Moses Haas, Petitioner, vs. William Henkel, United States Marshal in and for the Southern District of New York, and John A. Shields, United States Commissioner for the Southern District of New York, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of February, in the year of our Lord One Thousand Nine Hundred and nine, and

of the Independence of the said United States the One Hundred and Thirty-third.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. Moses Haas, Petitioner, vs. William Henkel, U. S. Marshal, S. D. N. Y., and John A. Shields, U. S. Comm'r, S. D. N. Y. Transcript of Record from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 21,524. S. New York, C. C. U. S. Term No. 367. Moses Haas, appellant, vs. William Henkel, United States Marshal for the Southern District of New York, et al. Filed February 20th, 1909. File No. 21,524.

Office Supreme Court, U. S.
FILED
MAR 16 1909
JAMES H. McKENNEY,
Clerk

No. 367.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

MOSES HAAS, APPELLANT,

v.

WILLIAM HENKEL, UNITED STATES MARSHAL, ETC., ET AL.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

October Term, 1908.

MOSES HAAS, APPELLANT,

v.

WILLIAM HENKEL, UNITED STATES Marshal, etc., et al.

No. 728.

MOTION TO ADVANCE.

This is an appeal from an order of the Circuit Court for the Southern District of New York, discharging a writ of habeas corpus and remanding appellant to the custody of the marshal to await orders for his removal to the District of Columbia for trial upon four indictments pending against him there.

These indictments were found May 29, 1908, and charge the appellant with conspiracy to defraud the United States and to commit an offense against the United States, in violation of section 5440, Revised Statutes.

In the summer of 1905, as the result of an investigation made by the grand jury in the District of Columbia, indictments were found there against appellant and one Frederick A. Peckham (appel-

76099—09

lant in case No. 727) and one Edwin S. Holmes, jr., charging them with conspiring in June, 1904, to defraud the United States, the fraud to be committed by Holmes, who as Associate Statistician in the Department of Agriculture was engaged in the preparation of cotton-crop reports issued by that department, furnishing to his codefendants, Haas and Peckham, advance information of the contents of such reports, with the aid of which Haas and Peckham were to speculate in cotton. Removal proceedings instituted under these indictments against Haas and Peckham proving ineffectual, a trial of Holmes alone was had, which resulted in a disagreement of the jury.

In the spring of 1908 a further investigation was made, both in the District of Columbia and in New York, and there were found not only four indictments as above mentioned by the Washington grand jury, but four similar indictments in the Circuit Court for the Southern District of New York. With the consent of that court the present removal proceedings were instituted for the return of Haas and Peckham to Washington, in order that they might be tried there with their codefendant Holmes.

In these proceedings, the identity of Haas being admitted, the Government rested after putting in evidence certified copies of the District of Columbia indictments and of the bench warrants issued thereon.

After evidence put in by the appellant, the commissioner found the existence of probable cause, and held him for removal to the District of Columbia.

In the indictments in which the present removal proceedings were based the conspiracies are alleged to have been formed in the District of Columbia on May 31, 1905. The indictment, which in all of them is practically the same, charges in substance that at the time of the commission of the offenses there existed in the Department of Agriculture a Bureau of Statistics, in which were prepared at stated times, from information obtained from certain approved sources, reports as to the condition and extent of the cotton crop of the United States; that among the officers engaged in the preparation of these reports was Holmes, who was known as Associate Statistician; that said reports, as required by law, were approved by the Secretary of Agriculture before their official issue and publication, and that when so published they frequently affected the market price of cotton; and that under the custom and practice of said department it was the duty of all persons engaged in making such reports to prepare accurate reports based upon the information so obtained, and without regard to their effect on the market, and also to maintain absolute secrecy as to the contents of the reports until the same had been officially published.

Certain of the indictments then charge that the appellant, Haas, conspired with Peckham to commit the offense of bribery under section 5451, Revised Statutes of the United States, by offering to Holmes a sum of money to induce him, in violation of his duty as Associate Statistician, to divulge in advance of their official issue the contents of the cotton crop reports.

In other indictments it is charged that Haas conspired with one Theodore H. Price to bribe Holmes not only to divulge the contents of the reports in advance, but also to prepare a false report for the purpose of affecting the market price of cotton in a way desired by the defendants.

Some of the indictments include Holmes as a defendant, and while the acts to be done by Holmes are set forth as in the other indictments, it is charged that the conspiracies were to defraud the United States.

The real question raised by this appeal is: Does any one of the indictments put in evidence before the Commissioner charge substantially a conspiracy to defraud, or to commit a crime against, the United States?

As to the separate indictments the questions may be concretely stated:

1. Is a conspiracy between Haas and Peckham to offer money to the Associate Statistician in the Department of Agriculture to induce him to divulge the contents of a cotton-crop report in advance of

its lawful publication a conspiracy to bribe an officer of the United States within the meaning of section 5451, Revised Statutes?

2. Is a conspiracy between Haas and Price to induce the Associate Statistician to prepare a false report such a conspiracy to bribe?

3. Is the preparation of a false cotton-crop report by the Associate Statistician, or the communication by him to Haas or Price of the contents of a cotton report, in advance of its official publication, a fraud upon the United States?

The following technical questions as to the sufficiency of the several indictments are raised:

4. Does it appear that the persons to whom Holmes was to divulge the contents of the reports in advance were persons not authorized to receive the same?

5. Does it appear that the defendant Holmes was an officer of the United States within the provisions of section 5451, Revised Statutes?

6. Are the essential allegations of the first counts of the several indictments sufficiently incorporated in the subsequent counts thereof by reference?

Other questions raised by the record, aside from the sufficiency of the indictments, are as follows:

7. Had the statute of limitations against the crimes charged in the 1908 indictments expired at the time of their finding?

8. Did the action of the district judge in refusing a warrant of removal on the 1905 indict-

ments constitute *res adjudicata* as to the 1908 indictments?

9. Was the Commissioner without authority to hold appellant for removal to the District of Columbia, because of the fact that appellant was then under bail to answer the New York indictments?

10. One of the Washington indictments, which, in reality was against Haas, Holmes, and Price, was indorsed on the back "United States against Haas, Peckham, and Price." Was this an indictment upon which Haas might be removed to the District of Columbia for trial?

The appellant is at large on bail.

It is important to the public interests that this appeal may be heard promptly, so that it may be known as soon as possible whether the acts charged are crimes against the United States for which the persons indicted may be tried, and for the further reason that the trial not only of the appellant himself but that of his codefendant Holmes is awaiting the decision of this appeal.

The Solicitor-General therefore moves the court to advance the case and set it down for hearing on such day as may be convenient to the court.

Notice of this motion has been served on opposing counsel.

HENRY M. HOYT,
Solicitor-General.

MARCH, 1909.

O

Office Supreme Court, U. S.
FILED.
MAR 16 1909
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

File No. [redacted] 36'7.

MOSES HAAS, APPELLANT,

vs.

WILLIAM HENKEL, AS UNITED STATES MARSHAL, &C., APPELLEE.

MEMORANDUM FOR APPELLANT IN OPPOSITION TO MOTION TO ADVANCE CAUSE.

NASH ROCKWOOD,
Of Counsel for Defendant Haas,
378 *Broadway, Saratoga Springs,*
N. Y.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

File No. 728.

MOSES HAAS, APPELLANT,

vs.

WILLIAM HENKEL, AS UNITED STATES MARSHAL, &c., APPELLEE.

MEMORANDUM FOR APPELLANT

In Opposition to Motion to Advance Cause.

The Solicitor General has moved for an order to advance said case for a hearing on such day as may be convenient to the court. Before stating our reasons why the motion should not be granted, a brief history of the case will be given.

Statement of Procedure.

On August 20, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham, and Moses Haas were indicted in the Supreme Court of the District of Columbia (indictment No. 24866), charged with having conspired to defraud the United States.

On August 22, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham, and Moses Haas were indicted in the Supreme

Court of the District of Columbia (indictment No. 24867), charged with having conspired to commit an offense against the United States.

On October 2, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham, and Moses Haas were indicted in the Supreme Court of the District of Columbia (indictment No. 24907), charged with having conspired to commit an offense against the United States, and in the second count thereof with having conspired to defraud the United States.

The defendant Haas was first arraigned before United States Commissioner Hitchcock, in the city of New York, on what was known as the "first indictment." The proceedings before the commissioner were adjourned from day to day and the case was finally transferred to United States Commissioner Ridgway. On the 13th day of October, 1905, the defendant duly appeared before Commissioner Ridgway, who certified the following as a record of what occurred at that time:

> "On consent of the United States attorney, I dis-
> "miss the proceedings against this defendant upon
> "the Hitchcock return and endorse thereon the de-
> "fendant's discharge."

Thereupon Commissioner Ridgway issued his warrant upon what became known as the "second indictment," and upon this so-called "second indictment" Judge Holt subsequently issued a warrant of arrest, as hereinafter stated. The matter before Commissioner Ridgway was argued at length, the briefs of counsel submitted, and thereafter, on the 20th day of October, 1905, the commissioner rendered his decision, in substance *holding that the indictment failed to charge a crime or offense, and he thereupon discharged both of the defendants, Haas and Peckham.*

Not content with this conclusion, the Government again applied to Hon. George C. Holt, United States judge for the Southern District of New York, for a warrant for the arrest and examination of the defendant Moses Haas upon indict-

ment No. 24907, being the third Washington indictment above mentioned, found on October 2, 1905. The defendant Haas was arrested upon this warrant on the 10th day of April, 1906, and brought before Judge Holt, who admitted him to bail pending the examination.

Again counsel for the defendant Haas took the same position that they have throughout this matter—that the indictment did not charge a crime or offense against the United States. Elaborate argument was had before Judge Holt and lengthy briefs submitted by both sides. Judge Holt took the matter under advisement and thereafter *rendered his decision, discharging the defendant and holding that the indictment failed to charge a statutory crime or offense.*

The defendant Haas having thus been discharged both by Commissioner Ridgway and United States Judge Holt in removal proceedings, *nothing further was heard of the matter*, as far as the defendant Haas was concerned, *until over two years thereafter, in the month of May, 1908.* In that month four indictments were found against the defendant Haas in the District of Columbia, upon which removal is now sought, and four indictments were found against him by a grand jury in the Southern District of New York. These 1908 indictments stated in their order are as follows:

Indictment No. 26086, against Edwin S. Holmes, Jr., Frederick A. Peckham, and Moses Haas, returned to the Supreme Court of the District of Columbia on May 29, 1908, charging conspiracy to defraud the United States.

Indictment No. 26087, against Moses Haas and Frederick A. Peckham, returned to the Supreme Court of the District of Columbia on May 29, 1908, charging conspiracy to commit an offense against the United States.

Indictment No. 26088, against Theodore H. Price, Moses Haas, and Frederick A. Peckham, returned to the Supreme Court of the District of Columbia on May 29, 1908, charging conspiracy to defraud the United States and to commit an offense against the United States.

Indictment No. 26089, against Theodore H. Price and Moses Haas, returned to the Supreme Court of the District of Columbia on May 29, 1908, charging conspiracy to commit an offense against the United States.

Indictment No. 1, returned to the Supreme Court of the United States for the Southern District of New York on the 29th day of May, 1908, against Moses Haas and Frederick A. Peckham, charging conspiracy to commit an offense against the United States.

Indictment No. 2, returned to the Supreme Court of the United States for the Southern District of New York on the 29th day of May, 1908, against Theodore H. Price and Moses Haas, charging conspiracy to commit an offense against the United States.

Indictment No. 3, returned to the Supreme Court of the United States for the Southern District of New York on the 29th day of May, 1908, against Edwin S. Holmes, Jr., Moses Haas, and Frederick A. Peckham, charging conspiracy to defraud the United States.

Indictment No. 4, returned to the Supreme Court of the United States for the Southern District of New York on the 29th day of May, 1908, against Theodore H. Price, Edwin S. Holmes, Jr., and Moses Haas, charging conspiracy to defraud the United States.

A bench warrant was issued for the arrest of defendant Haas on the New York indictments and he was admitted to bail. Thereafter the defendant Haas demurred to each of the four indictments in the New York jurisdiction and also moved to quash the indictments. Both demurrers and the motions to quash were argued before United States Judge Hough, who subsequently overruled the demurrers and denied the motion to quash. Thereafter and on or about the 24th day of June, 1908, removal complaints upon the Washington indictments were filed with United States Commissioner Shields. The proceedings thereupon were adjourned from time to time and finally came on for hearing before

Commissioner Shields on November 4, 1908. In the meantime the United States attorney for the southern district of New York made a motion for the consent of the circuit court that he be permitted to proceed with proceedings for the removal of the defendant Moses Haas to the District of Columbia, which consent was subsequently given. The consent, however, was merely to the effect that the District of Columbia might prosecute whatever legal rights it had.

Commissioner Shields committed the defendant to the custody of the United States marshal for removal to the District of Columbia, and thereupon the defendant applied to the United States circuit court and obtained writs of *habeas corpus* and certiorari.

The appellee made his return to said writ of *habeas corpus*, alleging that he held the defendant in custody by virtue of the warrant issued by Commissioner Shields in the removal proceedings. The case thus presented was argued before the circuit court of the United States, Judge Ward presiding; and after consideration the writs of *habeas corpus* were dismissed and the defendant remanded to the custody of the marshal. From this decision the defendant Moses Haas has taken this appeal to this court, and Judge Ward granted a stay of proceedings pending appeal.

POINTS.

I.

THE MOTION SHOULD BE DENIED, AS NO SUFFICIENT REASON IS SHOWN IN THE MOVING PAPERS WHY THIS CASE SHOULD BE ADVANCED.

(a) This is not a criminal case.

Rule 26 of the Supreme Court states in detail what causes may be advanced. Subdivision 3 of that rule reads as follows:

> "Criminal causes may be advanced by leave of the
> "court on motion of either party."

As this is an appeal from an order dismissing a writ of *habeas corpus*, it is not a criminal case; therefore the above section of the rule is not applicable. Even if it were a criminal case, or a quasi-criminal case, the advancing of a criminal case under the above rule is discretionary with the court, and has been refused when it appeared that the defendant was not in jail.

Ward *vs.* Maryland, 12 Wall., 164.

(b) This case has never been adjudicated by this court upon the merits.

Subdivision 4 of Rule 26 provides:

> "Cases once adjudicated by this court upon the
> "merits, and again brought up by writ of error or
> "appeal, may be advanced by leave of the court on
> "motion of either party."

This is not such a case, as the case has never been before the court before.

(c) This is not a revenue case or a case which involves or affects a matter of general public interest.

Subdivision 5 of Rule 26 provides:

> "Revenue and other cases in which the United
> "States are concerned, which also involve or affect
> "some matter of general public interest, may also,
> "by leave of the court, be advanced on motion of
> "the Attorney General."

As this case is not a revenue case and does not involve or affect a matter of general public interest, it does not come under this subdivision.

In Carter *vs.* Greenhough, 109 U. S., 64, this court held:

> "A case will not be taken up out of its order simply because it is of great public importance."

Chief Justice Waite adding:

> "The questions involved may be of public importance, but that does not necessarily entitle the parties to a hearing in preference to others. Practically every case advanced postpones another that has been on the docket three years awaiting its turn in the regular call. Under these circumstances we deem it our duty not to take up a case out of its order except for imperative reasons."

U. S. *vs.* Norton, 91 U. S., 558, was a criminal case, and the motion to advance was made on behalf of the United States, it being alleged that the questions in dispute would embarrass the operations of the Government while they remained unsettled. This court held:

> "As our rule has but recently gone into operation, we will, in this case, accept this statement as sufficient and grant the motion. Hereafter motions to advance upon this ground must state the facts in such manner that we may judge whether the Government will be embarrassed in the administration of its affairs by delay. In the present crowded state of the docket, it is our duty to see that cases are not unnecessarily brought forward to the prejudice of others."

Tested by the rule laid down in the two cases decided by this court, above referred to, this motion should be denied. The affairs of the Government cannot be in any way affected by permitting this case to take its regular order of argument, nor are there any imperative reasons, as suggested in the Carter case, why the motion should be granted. Our contention, among others, is that the alleged crimes were barred by the three-year statute of limitations, and even if we accept

the Government's version of the matter, the indictments were found only two days before the statute of limitations would apply, as is conceded by the Government. Can it now be urged to this court that a matter which the Government permitted to slumber for nearly three years is a matter of such great public importance that the case should be taken out of its regular order in the ordinary course of judicial procedure?

The allegation of the Solicitor General in the moving papers that—

> "It is important to the public interests that this appeal may be heard promptly, so that it may be known as soon as possible whether the acts charged are crimes against the United States for which the persons indicted may be tried, and for the further reason that the trial not only of the appellant himself, but that of his codefendant Holmes, is awaiting the decision of this appeal"—

is a mere conclusion and does not state any facts whatever from which the court can conclude that the case is of any public importance.

(d) There are no special or peculiar circumstances which warrant the advancing of this cause.

Subdivision 7 of Rule 26 provides:

> "No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court." . . .

There are no special and peculiar circumstances connected with this case, as we contend, which bring it within this subdivision of the rule.

II.

THERE ARE THREE CASES IN THIS MATTER, INVOLVING PRACTICALLY THE SAME QUESTIONS, WHICH SHOULD BE HEARD TOGETHER.

The three defendants, Theodore H. Price, Frederick A. Peckham, and Moses Haas, have been in some of the indictments jointly indicted. The same *habeas corpus* proceedings were taken in each case. The defendant Peckham now has an appeal pending to this court, being docket No. 727; the defendant Theodore H. Price has an appeal also pending to this court upon the same questions. The records have been very recently filed and none of them are printed; they are very voluminous, the record in the Haas case being about nine hundred typewritten pages, the record in the Peckham case being about seven hundred and fifty typewritten pages, and the record in the Price case will be extensive. As these three cases practically involve the same questions, based upon the same indictments, they should be argued together. The questions involved are of great importance to the defendants, who contend that an effort is being made to deprive them of their liberty without due process of law, upon indictments not founded upon the commission of statutory offenses and by means of unusual procedure. The records in each of these appeals are so voluminous and the questions involved so important that counsel should be afforded every opportunity to present to this court extensive briefs. As the records have but recently come up to this court, counsel for defendants would be greatly embarrassed in their proper presentation of these cases to this court if subjected to any undue haste in the matter of argument.

III.

THE SUGGESTION THAT THE DECISION OF THIS CASE MAY AFFECT SOME OTHER CASE IN WHICH THE UNITED STATES IS INTERESTED IS NO SUFFICIENT REASON FOR ADVANCING THE ARGUMENT OUT OF ITS REGULAR ORDER.

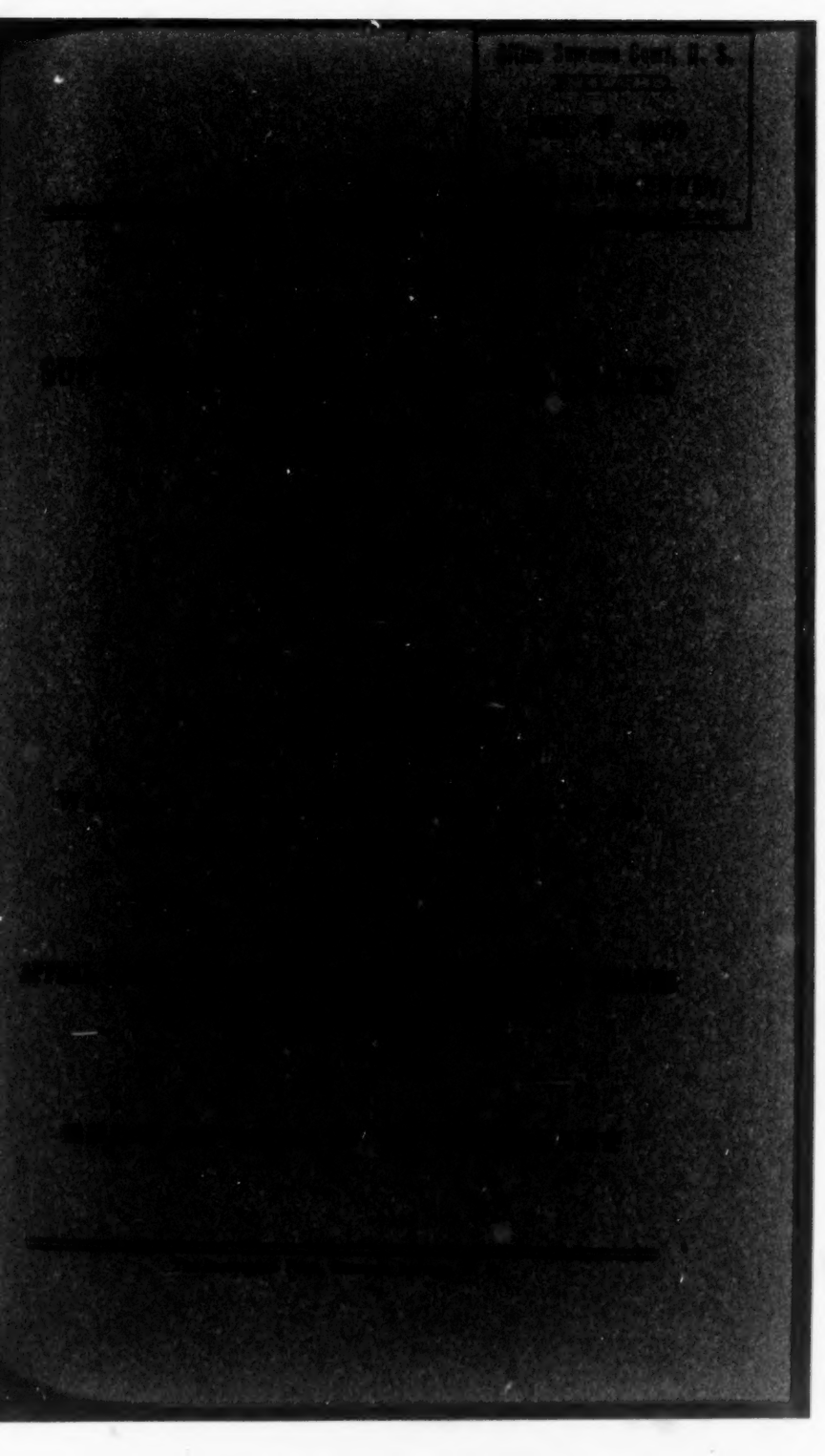
We do not know that the argument will be used before the court, but we have heard the suggestion made in connection with this motion, that the decision of the questions involved in this appeal will affect other removal cases in which the Government of the United States is interested. Can it be seriously urged for the Government that this is any reason why the defendants in the case at bar and their counsel should be compelled to argue this case before it is reached in its regular order upon the docket? Of course, the decision of any case necessarily affects some other pending or to be brought, and it is always desirable that judicial decisions should be promptly rendered. We have been unable to find any decision, however, in which the courts have gone to the length of saying that because a particular decision might possibly affect some other pending case, any unusual rules or procedure should be applied to the case which at the time happened to be at bar. Public interest in the decision is not made out by a suggestion that there might possibly be some effect upon any pending case. Public interest must attach to the case from the case itself and from the questions involved in the case itself. We submit that this consideration, if it is urged, which we very much doubt, is not worthy of attention.

For all of the reasons aforesaid, the motion should be denied and the case be permitted to take its regular course, in order that counsel may present to this court a full and comprehensive brief upon the questions here involved.

Respectfully submitted,

NASH ROCKWOOD,
Of Counsel for the Defendant Moses Haas,
378 Broadway, Saratoga Springs, N. Y.

Dated March 15th, 1909.



IN THE SUPREME COURT OF THE UNITED STATES

No. 367

MOSES HAAS,
Appellant,
v.
WILLIAM HENKEL, United States Marshal for the Southern District of New York, et al,
Respondent.

BRIEF
in Behalf of Appellant

Appeal from the Circuit Court of the United States for the Southern District of New York.

This is an appeal by the appellant, Moses Haas, by allowance duly given, from a final order made and entered in the Circuit Court of the United States for the Southern District of New York on the 18th day of January, 1909, denying the application of the appellant to be discharged from custody on a writ of habeas corpus directed to William Henkel, United States Marshal in and for the Southern District of New York, and remanding said Haas to the custody of the Marshal. (See Order, fols. 842-845, and Petition for Appeal with Allowance of Appeal, fols. 845-849).

Four indictments were found in the District of Columbia upon which removal of the defendant

Haas is now sought. At the hearing before the Commissioner, counsel for the government withdrew the removal complaint as to the 4th, 6th and 8th counts of Indictment No. 26,088. Judge Ward when applied to on habeas corpus held that indictment No. 26,086 and the 1st, 2nd, 4th, 5th, 6th and 8th counts of indictment No. 26,088 did not legally charge a crime, so that only indictments No. 26,087, the 3rd and 7th counts of No. 26,088 and No. 26,089, are now before this Court. (See Record fols. 393-4, and opinion of U. S. Judge Ward in Haas vs. Henkel, 166 Fed. R., 621.)

STATEMENT.

This case grows out of what has become known as the "cotton leak" in the Department of Agriculture.

The defendants concerned in it, who have been indicted, are

Edwin S. Holmes, Junior,
Theodore H. Price,
Moses Haas and
Frederick A. Peckham.

The sections of the Revised Statutes involved are:

Section 5440:

> "If two or more persons conspire either to "commit any offense against the United "States or to defraud the United States in "any manner or any purpose, and one or "more of such parties do any act to effect "the object of the conspiracy all the parties "to such conspiracy shall be liable to a "penalty of not more than ten thousand "dollars, or to imprisonment for not more "than two years or to both fine and imprisonment in the discretion of the court."

(See U. S. Compl. Stat. 1901. Vol. 3, pg. 3676.)

Section 5451:

"Every person who promises, offers, or "gives, or causes or procures to be promised "offered, or given, any money or other thing "of value, or makes or tenders any contract, "undertaking, obligation, gratuity, or secur- "ity for the payment of money, or for the "delivery or conveyance of anything of value, "to any officer of the United States, or to "any person acting for or on behalf of the "United States in any official function, under "or by authority of any department or office "of the Government thereof, or to any offi- "cer or person acting for or on behalf of "either House of Congress, or of any com- "mittee of either House, or both Houses "thereof, with intent to influence his de- "cision or action on any question, matter, "cause, or proceeding which may at any "time be pending, or which may by law be "brought before him in his official capacity, "or in his place of trust or profit, or with "intent to influence him to commit or aid in "committing, or to collude in, or allow, any "fraud, or make opportunity for the commis- "sion of any fraud, on the United States, or "to induce him to do or omit to do any act "in violation of his lawful duty, shall be "punished as prescribed in the preceding "section."

(See U. S. Compl. Stat., 1901, Vol. 3, pg. 3680.)

Section 5501:

"Every officer of the United States, and "every person acting for or on behalf of the "United States, in any official capacity under "or by virtue of the authority of any de- "partment or office of the Government there "of; and every officer or person acting for or "on behalf of either House of Congress, or "of any Committee of either House, or of "both Houses thereof, who asks, accepts, or "receives any money, or any contract, "promise, undertaking, obligation, gratuity, "or security for the payment of money, or "for the delivery or conveyance of anything

"of value, with intent to have his decision
"or action on any question, matter, cause,
"or proceeding which may, at any time, be
"pending or which may be by law brought
"before him in his official capacity, or in his
"place of trust or profit, influenced thereby,
"shall be punished as prescribed in the pre-
"ceding section.

(See U. S. Compl. Stat. 1901, Vol. 3, pg. 3709.)

The matter has been pending in the courts in one form or another since 1905. Reference will be made later to these prior proceedings and their effect upon the present case, but so that the Court may be advised of the various steps which have been taken, relating to the indictments found in the year 1908, in the District of Columbia and the Southern District of New York, these indictments and the procedure connected herewith will be considered in their order.

THE FOUR NEW YORK INDICTMENTS OF 1908.

On May 29, 1908, there was filed in the United States Circuit Court for the Southern District of New York an indictment against Moses Haas and Frederick A. Peckham, charging them with conspiracy to commit an offense against the United States in having violated Section 5440 and Section 5451 of the United States Revised Statutes (See Indictment, fols. 626-638).

On the 29th day of May, 1908, there was filed in the United States Circuit Court, Southern District of New York, an indictment against Theodore H. Price and Moses Haas, charging them with conspiracy to commit an offense against the United States in having violated Sections 5440 and 5451 of

the Revised Statutes. (See Indictment, fols. 639-658).

On May 29, 1908, there was filed in the United States Circuit Court for the Southern District of New York, an indictment against Edwin S. Holmes, Junior, Moses Haas, and Frederick A. Peckham, charging them with conspiracy to defraud the United States in having violated Section 5440 of the United States Revised Statutes. (See Indictment, fols. 658-666).

On the 29th day of May, 1908, there was filed in the United States Circuit Court for the Southern District of New York, an indictment against Theodore H. Price, Edwin S. Holmes, Junior, and Moses Haas, charging them with conspiracy to defraud the United States in having violated Section 5440 of the Revised Statutes. (See Indictment, fols. 666-693).

On the 29th day of May, 1908, a warrant was issued for the arrest of the defendant Moses Haas (see Warrant, fols. 695-696) and he was arraigned before United States Judge Chatfield on June 1st, 1908, (fol. 694). Thereafter and on June 1st, 1908, he gave bail for his appearance for trial before John A. Shields, Esq., United States Commissioner, who made the following endorsement upon the warrant:

> "Def't discharged on bail to await trial.
> June 1, 1908.
>
> JOHN A. SHIELDS,
> U. S. Com.
> (fol. 694).

The recognizance given by the defendant Haas

was in the sum of $10,000 with a sufficient surety who qualified in the sum of $10,000, and the said recognizance was conditioned as follows:

> "Now, therefore, the condition of this recognizance is such that if the said Moses Haas shall personally appear at the next Circuit Court of the United States for the Southern District of New York, to be holden at the United States Court Building in the City of New York on the 19th day of June, in the year of our Lord One Thousand Nine Hundred and Eight, at o'clock in the forenoon of that day, and from day to day, and from time to time thereafter, as directed by said Court, and then and there answer all such matters and things as shall be objected against him, and abide the order of the Court, and not depart the said Court without leave, then this recognizance to be void, otherwise to remain in full force and virtue."

(See Recognizance, fols. 697-700).

A further recognizance in the sum of $7,000, the surety qualifying in the sum of $10,000, was taken from the defendant Haas, the same having similar terms and conditions (See Recognizance, fols. 701-706, 707).

From the foregoing it will be seen that the defendant Haas was held for trial in the New York jurisdiction and liberated on bail in the sum of $17,000.

The proceedings were thereupon adjourned to June 19, 1908, (fols. 707-708), at which time the defendant Moses Haas filed written demurrers to the indictments upon the following grounds:

1st. That the acts charged in said indictment do not constitute a crime.

2nd. That the acts charged in said indictment do not constitute the crime charged.

3rd. That there are no facts alleged showing that the United States was defrauded by any wrongful acts of defendant.

4th. That sufficient facts are not shown to establish the charge of conspiracy, in that the act concerning which the defendants are charged to have conspired is not a criminal offense known to the law.

5th. That the facts constituting the alleged crime are not stated with certainty as required by law.

There was also a further objection that the indictments charged the commission of more than one alleged offense in several different counts, and that it does not appear that the facts set up in each count refer to the same transaction. Four separate demurrers were interposed—one to each indictment. (See Demurrers, fols. 708-718).

The defendant Haas also moved the court to quash the indictments returned against him, upon the ground that he had been subpoenaed before the Grand Jury and thus made to be a witness against himself in violation of his constitutional privilege. His claim in that respect was asserted in his moving papers as follows:

> "I claim that in calling me before said "Grand Jury and requiring me to be sworn "as a witness and compelling me to assert "my privilege and claim the constitutional "immunity granted to me by the Constitu- "tion of the United States in a proceeding "which was then pending before the said "Grand Jury, directed against me in con- "nection with others, that my constitutional "right, not to be made a witness against

" myself, except at my own request, was in-
" vaded, jeopardized and violated, and that
" such constitutional immunity given to me
" by law was transgressed; that I was there-
" by put in a position before the said Grand
" Jury which was at said time investigating
" a crime alleged to have been committed by
" me with others, where I was compelled to
" plead my privilege or else to become a
" witness against myself, thereby violating
" the constitutional immunity granted to me
" by the Constitution of the United States,
" for all of which reasons I urge that the
" said four indictments so returned against
" me were illegally found, and that all of the
" same should be set aside and dismissed."
See Affidavit, fols. 725-726.)

The demurrers and motion to quash were both opposed by the United States Attorney and argument thereupon was had before Honorable Charles M. Hough, United States District Judge, holding a Circuit Court, who thereafter and on or about the first day of October, 1908, rendered his decision in the four cases in which he denied the defendant's motion to inspect the minutes of the Grand Jury and the motion to quash the indictments, overruled each of the demurrers, and directed the defendant Haas to appear and plead to said indictments at a term of the United States Circuit Court for the Southern District of New York to be held on October 12, 1908, (see Order, fols. 731-734). The opinion of Judge Hough, upon the motion to quash, will be found at folios 735-743; and his opinion in overruling the demurrers is at folios 744-752.

(The opinion of Judge Hough, upon the motion to quash, upon the ground that Haas had been called as a witness before the Grand Jury, is reported in United States v. Price, and United States v. Haas, 163 Fed. Rep., 904.)

(The opinion of Judge Hough upon the demurrers to the indictments, is reported in United States v. Haas et al, 163 Fed. Rep., 908.)

Thereafter and on October 6, 1908, the United States Attorney for the Southern District of New York, moved the Circuit Court

> "For the consent of the said Circuit Court "that the United States Attorney for the "Southern District of New York, proceed "with proceedings for the removal of the "defendant Moses Haas to the District of "Columbia, in accordance with provisions "of Revised Statutes, Section 1014." (fols. 754-755).

In the affidavit of Honorable Henry L. Stimson, United States Attorney, the proceedings which had been taken with reference to the indictments in the New York jurisdiction were fully set forth; it was also recited that four similar indictments had been found against the defendants in the District of Columbia, and it was asked for the convenience of the Governments witnesses, in substance, that the New York indictments should remain in statu quo and that the proceedings to remove the defendants and try them in Washington should be proceeded with. (See Notice of Motion and Affidavit of Henry L. Stimson, fols. 754-762). There was annexed to the moving papers a letter from the Hon. Charles J. Bonaparte, Attorney General, in which it was stated by him that it was desired to try the defendants in the District of Columbia for the convenience of the Government. The letter from the Attorney General, which was addressed to the Honorable Henry L. Stimson, United States Attorney for the Southern District of New York, contained, among other things, the following statement:

"On May 29, 1908, there were returned
"into the Circuit Court of your District cer-
"tain indictments against Theodore H.
"Price, Moses Haas and Frederick A. Peck-
"ham, together with Edwin S. Holmes, Jr.,
"charging them with conspiracy to defraud
"the United States and to commit offenses
"against the United States. At the same
"time similar indictments were returned
"against these men in the Supreme Court of
"the District of Columbia. Holmes is a res-
"ident of Washington, while Price, Haas
"and Peckham are at present in the State
"of New York. You will be good enough to
"request the Circuit Court of your District
"to consent to the removal of Messrs. Price,
"Haas and Peckham to Washington for trial
"upon the indictments pending here, it be-
"ing understood, of course, that should the
"trial here result in acquittal or conviction
"the indictments in New York will be
"dropped."

(See Letter, folios 762-765).

This motion, for the consent of the Circuit Court to proceed with the removal proceedings to the District of Columbia was made over three months after the removal proceedings had been instituted.

The defendant, Haas, filed an affidavit in answer to this motion in which he recited all of the proceedings in which he was held under and by virtue of the four indictments found against him in the New York jurisdiction, and concluded as follows:

"I have resided in the City of New York,
"in the Southern District of New York, for
"about sixteen years, and submit that I am
"entitled to be tried by a jury of the Dis-
"trict of my residence, namely, of the
"Southern District of New York, wherein
"the charges preferred against me are in

" the said New York indictments alleged to
" have been committed; and I submit that
" I should not be subjected to trial in a dis-
" tant District wherein I do not reside, or
" before a jury of such District. I have read
" the letter of Attorney General Bonaparte,
" attached to the moving papers herein, and
" particularly the statement therein con-
" tained which reads: ' It would not be pos-
" ' sible to find any three weeks in the year
" ' during which the Bureau of Statistics
" ' would not issue, or be preparing to issue,
" ' at least one crop report.' Which state-
" ment, as I understand it, is incorrect; there
" being, as I am informed, periods during
" each year of considerably more than three
" weeks each when no crop reports what-
" ever are issued, and that the persons em-
" ployed in the Department of Agriculture
" who would probably be called as wit-
" nesses, as set forth in the letter of said At-
" torney General, could attend at New York
" during such periods without material in-
" convenience. Again, the records of crop
" reports are printed and published and
" could be as easily produced in New York
" as in Washington. I submit that I should
" be tried—if at all—in the place of my resi-
" dence, and should not be put to the expense
" of taking my witnesses and counsel to
" Washington for trial before a foreign
" jury."

(See Affidavit of Moses Haas, fols. 768-774).

Argument of the motion thus presented was had before United States Judge Hough, who thereafter and on October 24, 1908, granted the motion, writing as follows:

" No legal reason is perceived why every
" Court in which a man is indicted should
" not legally *attempt* to bring the accused to
" trial. If there are many of them and they
" all try to get the defendant at the same
" time—the ensuing—should be cleared

"away by the Court or Judge, or other au-
"thority having the power of surrender.
"This Court has not jurisdiction under U.
"S. R. S. 1014 that no objection and (I
"think) can have no right to object—to the
"pursuit of such legal remedies as the
"Courts or prosecuting officers of the Dis-
"trict of Columbia may have under the sec-
"tion of the Rev. Stat. referred to. The
"convenience of either prosecutor or defend-
"ant is not important. The District of Co-
"lumbia has a legal right to proceed in the
"way pointed out by statute, and to such
"procedure this Court assents."

(See Order and Decision, fols. 775-778).

It will be observed that this decision was merely to the effect that the District of Columbia might prosecute whatever legal rights it had; also that there was no concession, consent, or finding that the District of Columbia had a legal right to extradite the defendant Haas under the circumstances of this case. After the entry of this order nothing further was done with the New York Indictments.

THE FOUR WASHINGTON INDICTMENTS OF 1908.

On May 29, 1908, *the same day that the four indictments were filed in the Southern District of New York*, four indictments, alleging similar offenses to have been committed by the same defendants in the District of Columbia, were returned in the Supreme Court of the District of Columbia, as follows:

On May 29, 1908, indictment No. 26086, against Edwin S. Holmes, Junior; Frederick A. Peckham and Moses Haas, charging conspiracy to defraud

the United States, was filed in the Supreme Court of the District of Columbia. (See Indictment, fols. 247-256).

On May 29, 1908, indictment No. 26087, against Moses Haas and Frederick A. Peckham, charging conspiracy to commit an offense against the United States, was filed in the Supreme Court of the District of Columbia. (See Indictment, fols. 257-270).

On May 29, 1908, indictment No. 26088, containing eight counts, against Edwin S. Holmes, Junior; Moses Haas and Theodore H. Price, charging conspiracy to defraud the United States and to commit an offense against the United States, was filed in the Supreme Court of the District of Columbia.

On May 29, 1908, Indictment No. 26089, containing two counts, against Theodore H. Price and Moses Haas, charging conspiracy to commit an offense against the United States, was filed in the Supreme Court of the District of Columbia.

At this point the Court will observe that on May 29, 1908, *eight indictments in all were returned against the defendants — four indictments in the Southern District of New York charging the conspiracies to have been committed in the Southern District of New York; and four indictments in the District of Columbia charging the same conspiracies to have been committed in the District of Columbia.*

On June 24, 1908, *after the defendant had been arraigned upon the New York indictments and had demurred thereto*, there was presented to John A. Shields, Esq., United States Commissioner, two affidavits of Honorable Goldthwaite H. Dorr, an Assistant United States Attorney for the Southern District of New York, in which affidavits Mr. Dorr

stated that on the 29th day of May, 1908, four indictments had been found in the District of Columbia, as aforesaid, against the several defendants named. He annexed to these affidavits certified copies of the indictments so found, and, *upon the information and belief derived therefrom*, averred that the defendants had committed the crimes alleged in the District of Columbia. (See Affidavit Relative to Indictments, Nos. 26086 and 26087; fols. 243-246; and Affidavit Relative to Indictments Nos. 26088 and 26089; fols. 276-284).

There was no bench warrant issued from the District of Columbia attached to these affidavits and moving papers. *Nor was there any statement whatever, in either of the affidavits of Mr. Dorr, that the defendants were wanted in the Washington jurisdiction.*

On June 24, 1908, John A. Shields, Esq., said Commissioner, issued two warrants, upon the aforesaid complaints, for the arrest of the defendant Haas, (see Warrant, fols. 242, 272).

On June 24, 1908, the Marshal arrested the defendant Haas (fol. 239) and produced him before the Commissioner, at which time the accused demanded an examination and the proceedings were adjourned to July 17, 1908, the defendant was again required to give $5000 bail for his appearance, although, as previously stated, he was already at that time released on bail in the sum of $17,000 upon the indictments found against him the Southern District of New York (fols. 240-241). Bail having been given, the proceedings were adjourned from time to time until November 4, 1908, at which time the United States Attorney moved

to be allowed to withdraw the complaint and warrant as to the defendant Theodore H. Price, relative to the indictments found against him, which motion was granted by the Commissioner. Thereupon a hearing was had before the United States Commissioner upon the complaints seeking the removal of the defendant to the District of Columbia for trial, which hearing is given in full in the record at folios 356 to 445 thereof. The parts thereof which the defendant Haas claims were prejudicial to him will be referred to at length later on in this brief. The Commissioner reserved decision and, subsequently, and on the 30th day of November, 1908, rendered his decision in writing (fols. 778-783) in which he concluded:

> "I am therefore constrained to commit "defendant on the two complaints pending "before me to await the action of one of the "District Judges on an application to be "made to him for a warrant of removal."

And said Commissioner then issued his order and warrant directing

> "The said Moses Haas is hereby com- "mitted to the custody of the United States "Marshal for the Southern District of New "York until a warrant for his removal shall "issue by the United States District Judge, "or he shall be otherwise dealt with, accord- "ing to law.
> "New York, November 30, 1908."
> (fols. 238-239.)

The defendant Haas was then taken into the custody of the United States Marshal and thereupon, on said November 30th, 1908, presented his petition to the United States Circuit Court for the Southern District of New York, in which he prayed

that a writ of habeas corpus issue, directed to the Marshal, commanding him to produce the petitioner before the Court together with the cause of his imprisonment and detention; and also that a writ of certiorari issue, directed to John A. Shields, Esq., United States Commissioner, in aid of the said writ of habeas corpus, requiring said Commissioner to return and certify to the Court forthwith the cause of the imprisonment with true copies of all proceedings, etc. (See Petition, fols. 2-30).

Upon the presentation of said petition, a writ of habeas corpus was issued by Honorable George C. Holt, United States Judge, directing the Marshal of the District to produce the defendant Haas before the Circuit Court of the United States on December 4, 1908. Bail was again fixed at $5000, which defendant gave and was thereupon released (fols. 2-3; 785-788). Judge Holt also issued a writ of certiorari directed to John A. Shields, Esq., United States Commissioner, commanding him to certify and return to the United States Circuit Court, on the 4th day of December, 1908, the cause of the imprisonment of the defendant with copies of all proceedings (fols. 235-236).

On December 4, 1908, William Henkel, United States Marshal, filed his return to the writ of habeas corpus to the effect that said Moses Haas was in his custody by virtue of two warrants of commitment, each dated November 30, 1908, signed by John A. Shields, United States Commissioner in and for the Southern District of New York (see Return, fols. 226-228). The defendant Haas thereupon filed a traverse and answer to the return of the Marshal, alleging in substance that

his detention was illegal and void; and, further, that

"*First.* Said commitment under and by "virtue of which said Marshal returns that "he is holding, restraining and depriving "petitioner of his liberty is illegal and void "for the following reasons:

"(1) Said Commissioner who issued said "warrant to said Marshal was without ju- "risdiction to commit the defendant for re- "moval to the District of Columbia—for the "reason that said defendant was under in- "dictment in the Southern District of New "York for precisely the same offense "charged against him by certain indict- "ments found in the District of Columbia. "Said defendant had been apprehended "upon said New York indictments and ad- "mitted to bail; had demurred to the suf- "ficiency of the indictments and such de- "murrers had been overruled. He was "therefore legally in custody in the South- "ern District of New York, awaiting trial "for precisely the same offenses for which "removal is now sought to the District of "Columbia.

"(2) The alleged crimes set forth in the "certain indictments so found in the Dis- "trict of Columbia were and are barred by "the Statute of Limitations.

"(3) The said indictments do not charge "the defendant with the commission of a "statutory crime or offense, and there was "therefore an entire absence of probable "cause before the Commissioner.

"*Second.* The said indictments relating to "Section 5451 of the Revised Statutes of the "United States do not sufficiently charge "the violation of that Section.

"*Third.* The alleged crime of conspiracy "to bribe attempted to be set forth in the "indictments resulting in said warrant upon "which defendant is held merge in the com- "pleted offense.

"*Fourth.* [illegible]e proceedings before said "Commissioner resulting in the issuance of

"said warrant did not confer jurisdiction "upon said Commissioner to commit the de- "fendant for removal for the additional rea- "son that the complaints upon which pro- "ceedings were instituted before said Com- "missioner were all upon information and "belief, and not upon the positive knowl- "edge of the affiant.

"*Fifth.* The defendant is deprived of his "liberty without due process of law and "contrary to the provisions of the Consti- "tution of the United States; said Commis- "sioner was wholly without jurisdiction to "issue said warrants, and said Marshal is "acting under illegal warrants in attempt- "ing to hold and detain said defendant and "deprive him of his liberty as aforesaid." (Fols. 231-233).

The United States Commissioner at the same time, in obedience to the writ of certiorari, returned to the Court the record and proceedings of the case which had been had before him (fols. 237-238).

Argument of the issues thus presented was had before Honorable Henry G. Ward, United States District Judge, and briefs submitted. Pending the decision of Judge Ward, it appeared that in the proceedings instituted by the Government before United States Commissioner Shields for the removal to the District of Columbia of the defendant Theodore H. Price, upon indictment No. 26088, certain photographic exhibits and other testimony had been produced on behalf of Mr. Price before the United States Commissioner tending to show that indictment No. 26088 was illegally found and that the records of the Court with relation thereto had been changed. Thereupon the defendant Haas, in an affidavit setting forth these additional

facts which related to indictment No. 26088, upon which indictment the defendant Haas had also been held, and annexing to his affidavit copies of the photographic exhibits and of the testimony which had been given with reference thereto (see Affidavit, fols. 790-795) moved the Circuit Court for an order

> "That the testimony of J. F. Brown and "Samuel McC. Hawken, given before United "States Commissioner Shields on the 10th "day of December, 1908,"

as well as the photographic exhibits referred to in said testimony, be added to and included in the Haas record and considered upon the application then pending before Judge Ward (see Notice of Motion, fols. 788-790).

This motion was argued and Judge Ward took the matter under advisement. Subsequently and on January 7, 1909, Judge Ward rendered his decision denying the application to have the testimony and photographic exhibits considered and finding that of the indictments found in Washington, indictments Nos. 26087 and 26089 charged offenses against the United States; and that the third and seventh counts of indictment No. 26088 also charged conspiracy to defraud, for which reasons Judge Ward concluded:

> "The Commissioner had probable cause "for commitment and the writ is therefore "discharged and the petitioner remanded." (See Decision, fols. 828-836. Also reported in Haas v. Henkel, 166 Fed. Rep., 621.)

This was followed by the entry of an order signed by Judge Ward as follows:

"Ordered, that said motion to add to the "record herein be and hereby is denied; and "it is further

"Ordered, that said motion on said writ "of habeas corpus to discharge the said "Moses Haas be and it hereby is in all re- "spects denied; and that said Moses Haas "be and he hereby is remanded to "the custody and control of said William "Henkel, United States Marshal for the "Southern District of New York." (See Order, fols. 842-845.)

Thereupon and on the 18th day of January, 1909, the defendant Moses Haas presented to the Circuit Court of the United States his petition for an order allowing him to appeal to the United States Supreme Court (see Petition, fols. 845-848). The Circuit Court allowed said appeal and granted an order staying all proceedings pending appeal, and directing that the defendant be released on bail to await the decision and determination of the appeal, the supersedeas bond being fixed at $5000, (fol. 848) which bond was duly given (fols. 856-859). The usual bond for costs, in the sum of $250, was also given by the appellant (fols. 860-863). The citation on appeal was issued on the 18th day of January, 1909, (fols. 863-865) and copies duly served and filed. Assignments of error were also presented and filed and will be hereinafter printed at length.

THE THREE WASHINGTON INDICTMENTS OF 1905.

As stated above, this matter has been pending in the courts since 1905. In that year three in-

dictments were found in the District of Columbia and, as bearing upon the question of the bar of the Statute of Limitations, to be hereafter discussed, it is important that these 1905 indictments and the proceedings had thereunder should be discussed.

The Washington indictments of 1905 are based upon practically the same set of facts alleged in the later indictments and were all introduced in evidence before the Commissioner in these proceedings. Briefly stated, they are as follows:

On August 22, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas, were indicted in the Supreme Court of the District of Columbia (indictment No. 24866) charged with having conspired to defraud the United States (fols. 456-481).

On August 22, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas were indicted in the Supreme Court of the District of Col (indictment No. 25,907) charged with having conspiring conspired to commit an offense against the United States (fol. 483-510).

On October 2, 1905, Edwin S. Holmes, Jr., Frederick A. Peckham and Moses Haas were indicted in the Supreme Court of the District of Columbia (indictment No. 24,907) charged with having conspired to commit an offense against the United States, and in the second count thereof with having conspired to defraud the United States (fols. 511-572).

The defendant Haas was first arraigned before United States Commissioner Hitchcock, in the City of New York, on what was known as the "first indictment." The proceedings before the Commissioner were adjourned from day to day and the

case was finally transferred to United States Commissioner Ridgway. On the 13th day of October, 1905, the defendant duly appeared before Commissioner Ridgway, who certified the following as a record of what occurred at that time:

"On consent of the United States Attorney I "dismiss the proceeding against this defendant "upon the Hitchcock return and endorse thereon "the defendant's discharge.

Thereupon Commissioner Ridgway issued his warrant upon what became known as the "second indictment" and upon this so-called "second indictment" Judge Holt subsequently also issued a warrant of arrest, as hereinafter stated. The matter before Commissioner Ridgway was argued at length, the briefs of counsel submitted, and thereafter, on the 20th day of October, 1905, the Commissioner rendered his decision, in substance holding that the indictment failed to charge a crime or offense, and he thereupon discharged both of the defendants, Haas and Peckham. (See Opinion of Commissioner Ridgway, fols. 572-594).

Not content with this conclusion the Government again applied to Hon. George C. Holt, United States Judge for the Southern District of New York, for a warrant for the arrest and examination of the defendant Moses Haas upon indictment No. 24,907, being the third Washington indictment above mentioned, found on October 2, 1905. The defendant Haas was arrested upon this warrant on the 10th day of April, 1906, and brought before Judge Holt, who admitted him to bail pending the examination. Again counsel for the defendant Haas took the same position that they have

throughout this matter—that the indictment did not charge a crime or offense against the United States. Elaborate argument was had before Judge Holt and lengthy briefs submitted by both sides. Judge Holt took the matter under advisement and thereafter rendered his decision discharging the defendant and holding that the indictment failed to charge a statutory crime or offense. (See Opinion of Judge Holt, fols. 615-626; also reported in U. S. v. Haas, 167 Fed. Rep., 211).

The defendant Haas having thus been discharged both by Commissioner Ridgway and United States Judge Holt in removal proceedings, nothing further was heard of the matter, as far as the defendant Haas was concerned, until over two years thereafter in the month of May 29th, 1908, at which time the four indictments were found against the defendant Haas in the District of Columbia, upon which removal is now sought; and four indictments were also found against him in the Southern District of New York, as hereinbefore duly referred to.

THE ASSIGNMENTS OF ERROR.

The appellant filed certain assignments of error (fols. 849-855) which are as follows:

> "Comes now the petitioner, Moses Haas, "and files the following Assignments of Er- "ror upon which he will rely upon his pros- "ecution of the appeal from the final order "made in the Circuit Court of the United "States for the Southern District of New "York on the 18th day of January, 1909, in "the above entitled cause, dismissing the "Writs of Habeas Corpus and Certiorari "and remanding your petitioner:

"1. That the said Court erred in dismissing the petitioner's Writs of Habeas Corpus and Certiorari and in remanding him to the custody of the Marshal.

"2. That the said Court erred in refusing the discharge of said petitioner.

"3. That the said Court erred in holding that the restraint of the petitioner's liberty is legal.

"4. That the said Court erred in holding that the restraint of the petitioner is not a violation of his constitutional rights, under the Constitution of the United States.

"5. That the said Court erred in holding that the alleged indictments in the said record contained, or either of them, set forth a crime or offense against the laws of the United States.

"6. That the said Court erred in holding and deciding that any of the counts of the indictments charged a conspiracy to defraud the United States within the meaning of Section 5440 of the Revised Statutes.

"7. That the said Court erred in holding and deciding that any of the counts of any of the indictments charged a conspiracy to commit the offense against the the United States defined by Section 5451 of the Revised Statutes.

"8. That the said Court erred in holding that any of the indictments charged the offense of bribery.

"9. That the said Court erred in holding that any of the indictments charged the offense of conspiring to promise, offer and give to an officer of the United States and a person acting for and in behalf of the United States in an official function, under and by virtue of a certain department and office of the government, a sum of money to induce him to do acts in violation of his lawful duty.

"10. That the said Court erred in holding that the said alleged indictments, or either of them were properly admitted in

" evidence before the Honorable Commis-
" sioner to prove that there was probable
" cause to believe that your petitioner was
" guilty of a crime or offense against the
" laws of the United States.

" 11. That the said Court erred in declin-
" ing to hold and decide that the said Com-
" missioner was without jurisdiction to com-
" mit your petitioner for removal to the Dis-
" trict of Columbia, for the reason that said
" petitioner was under indictment in the
" Southern District of New York for the
" same offenses charged against him by the
" indictments found in the District of Colum-
" bia, as disclosed by the record herein; it
" appearing that your petitioner had been
" apprehended upon said New York indict-
" ments and had been admitted to bail; that
" he had demurred to the sufficiency of the
" indictments and that said demurrers had
" been overruled.

" 12. That the said Court erred in declin-
" ing to find and decide that your petitioner
" was legally in custody in the Southern
" District of New York, pursuant to indict-
" ments found in said district, awaiting trial
" for the same offenses for which proceed-
" ings were instituted before said Commis-
" sioner to effect the removal of your pe-
" titioner to the District of Columbia.

" 13. That the said Court erred in de-
" clining to hold and decide that the alleged
" crimes set forth in the four indictments
" found in the District of Columbia are, and
" each of them is, barred by the Statute of
" Limitations.

" 14. That the said Court erred in declin-
" ing to hold and decide that Holmes was
" not an officer of the United States within
" the meaning of that term, as used in Sec-
" tion 5451 and all the other sections of the
" Revised Statutes of the United States per-
" tinent to the charges attempted to be set
" forth.

" 15. That the said Court erred in hold-
" ing that the sufficiency of the indictment

" is to be determined by the Court in which " it was found, to wit, the Supreme Court " of the District of Columbia, and is not a " matter of inquiry in removal proceedings.

" 16. That the said Court erred in declin- " ing to hold and decide that the indictments " relating to Section 5451 of the Revised " Statutes do not sufficiently charge the vio- " lation of that Section.

" 17. That the said Court erred in declin- " ing to hold and decide that no count of any " of the indictments sufficiently charges any " offense against the United States, and that " since the application for removal is based " on the indictments alone, and no evidence " was offered to sustain them, that the Com- " missioner was not vested with jurisdiction " to commit your petitioner for removal.

" 18. That the Court erred in declining " to hold and decide that the alleged crime " of conspiracy to bribe did not merge in " the completed offense.

" 19. That the said Court erred in declin- " ing to hold and decide that the prelimi- " nary complaint, upon which the warrant " was issued against your petitioner, was in- " sufficient, it appearing that the same was " upon information and belief, and not upon " the positive knowledge of the affiant; and " also that a bench warrant from the Dis- " trict of Columbia was not filed with the " said complaint at the time that said war- " rant was issued.

" 20. That the said Court erred in declin- " ing to hold and decide that the previous " decision of United States Judge Holt, dis- " charging the defendant Haas, was techni- " cally *res adjudicata*, and should be held to " be conclusive upon the questions involved " before said Court.

" 21. That the said Court erred in refus- " ing and denying the testimony and pho- " tographic exhibits relating to indictment " No. 26,088 made a part of the record before " said Circuit Court of the United States in " this proceeding.

" 22. That the said Court erred in declin-
" ing to hold and decide that no one of the
" papers admitted in evidence as indictments
" had any legal inception.

" 23. That the said Court erred in hold-
" ing and deciding that any one of the
" papers admitted in evidence as indict-
" ments was proved to be a valid or legal in-
" dictment, and that any one of the said
" papers furnished any evidence of probable
" cause to believe the petitioner guilty of a
" crime, or was admissible in evidence in
" the proceeding.

" 24. That the said Court erred in not
" holding and deciding that your petitioner
" is unlawfully restrained of his liberty.

" 25. That the said Court erred in not
" holding and deciding that your petitioner
" is deprived of his liberty without due pro-
" cess of law within the meaning of the
" Fifth Amendment to the Constitution of
" the United States.

" 26. That the said Court erred in hold-
" ing that the commitment issued by the said
" Commissioner was not without legal au-
" thority or jurisdiction of any kind, and
" was not utterly void and ineffectual, and
" that the petitioner's detention and im-
" prisonment thereunder was not in viola-
" tion of the Constitution of the United
" States and in violation of his privileges
" and immunities thereunder.

" 27. That the said Court erred in declin
" ing to hold and decide that your petition-
" er's detention was in violation of Article
" V of the Amendments to the Constitution
" of the United States, in that the said
" United States Commissioner had no juris-
" diction to order the arrest and commit-
" ment of your petitioner, and in that your
" petitioner is held to answer for a crime
" without any sufficient or valid indictment
" of a grand jury.

" 28. That the said Court erred in declin-
" ing to hold and decide that the restraint
" of your petitioner is in violation of Article

" IV of the Amendments to the Constitution " of the United States, because it appears " from the indictment upon which the war- " rant in this case was issued that it was " wholly void.

" 29. That the said Court erred in failing " to hold and decide that the restraint of " your petitioner is in violation of the provis- " ions of Article VI of the Amendments to " the Constitution of the United States, for " the reason that upon the proof before the " Commissioner and before the said Court, " it was shown that the offenses charged in " the indictment were not committed in the " District of Columbia.

" 30. That the said Court committed " other errors appearing on the record.

" Wherefore, your petitioner prays that " the order dismissing the said Writs of " Habeas Corpus and Certiorari and remand- " ing your petitioner to the custody of the " United States Marshal be reversed and " that your petitioner be discharged from " custody.

" Moses Haas,

" Petitioner.

" Nash Rockwood,

" Max D. Steuer,

" Attorneys for Petitioner.

INDEX TO THE ARGUMENT.

POINTS.

I.

This court has jurisdiction of this appeal. (See page 33).

II.

It was error to hold the defendant for removal to the District of Columbia for trial. Indictments charging similar offenses to have been committed in the State of New York had been previously found against him in the Southern District of New York, upon which he was at that time enlarged on bail, awaiting trial after having demurred to the indictments and moved to quash the same. His application by habeas corpus to be discharged from custody should have beed granted as he has a constitutional right in this case to be tried, if at all, in the Southern District of New York. (See page 33).

III.

The indictments did not confer jurisdiction upon the commissioner to commit the defendant for removal to the District of Columbia and there was an entire absence of probable cause, for the reason that the indictments do not allege an illegal conspiracy to commit any offense against the United States. (See page 61).

IV.

The indictments did not confer jurisdiction upon the commissioner to commit the defendant for removal to the District of Columbia and there was an absence of probable cause for the additional reason that the indictments do not allege an illegal

conspiracy "to defraud the United States in any manner or for any purpose." (See page 76).

V.

The indictments did not confer jurisdiction upon the commissioner to commit the defendant for removal to the District of Columbia, and there was an absence of probable cause for the further reason that the indictments do not aver any illegal conspiracy to defraud the United States in the matter of making the reports untrue and inaccurate. (See page 95).

VI.

It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the government unless such custom, practice or regulation has been authorized by statute, and its violation made penal by some general or special law. (See page 111).

VII.

The third, fourth, fifth, sixth, seventh and eighth counts of indictment No. 26,088, and the second count of indictment No. 26,089, are further fatally defective for the reason that it is not in any of said counts alleged that the defendants knew, or had reason to know, of the alleged custom, practice, regulation or rule of secrecy in the Department of Agriculture. (See page 130).

VIII.

Indictments Nos. 26,087 and 26,089 and the second, third, fourth, fifth sixth, seventh and eighth counts of indictment No. 26,088 are further fatally defective in that they do not allege that the defendants were persons not authorized to receive the information. (See page 133).

IX.

Holmes was not an officer of the United States or a person acting for or on behalf of the United States in an official function under or by virtue of any department or office of the government thereof. There was no question, matter, cause or proceeding at any time pending in connection with the cotton crop reports which could by law be brought before him in an official capacity or upon which his decision or action could be influenced. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See page 140).

X.

If Holmes was a public officer as claimed by the government, the indictments in which he is joined as a defendant are fatally defective because Holmes could not conspire with himself to bribe himself or to influence himself or to induce himself to commit the alleged offense of misconduct in office. (See page 159).

XI.

The removal complaints filed with the United States Commissioner did not confer jurisdiction upon him to hold or commit the defendant for removal as there was no proof whatever of the issuance of bench warrants or that the defendants were wanted within the District of Columbia. Removal proceedings must be based upon the fact that the accused is wanted in the demanding jurisdiction and the absence of such proof is a jurisdictional defect. (See page 164).

XII.

The crimes and offenses attempted to be alleged in the Washington and New York indictments of 1908 were all barred by the Statute of Limitations. (See page 175).

XIII.

The alleged crime of conspiracy to bribe merged in the completed offense. (See page 198).

XIV.

It was error for the court to refuse and deny the motion of the defendant to have the photographic exhibits and certain testimony relating to indictment No. 26,088 (which had been introduced in evidence before the commissioner) in the Price case made a part of the record before the Circuit Court of the United States in this habeas corpus proceeding. (See page 202).

XV.

The fourth, sixth and eighth counts of indictment No. 26,088 are not in any event to be considered upon this appeal. (See page 213).

XVI.

There was an entire absence of probable cause before the commissioner and he was without jurisdiction to commit the defendants for removal to the District of Columbia because none of the indictments sufficiently charged the defendants with having committed any crime or offense against the United States within the purview of Section 5440 R. S. (See page 216).

XVII.

In conclusion. (See page 235).

ARGUMENT.

I.

This Court has jurisdiction of this appeal.

In Dimmick v. Tompkins, 194 U. S., 540, this Court held

> "The appeal directly to this Court from "the decision of the Circuit Court denying "the writ of *habeas corpus* was proper under "the averments contained in the petition "that the imprisonment of the appellant was "in violation of the federal constitution."

Craemer v. Washington State, 168 U. S., 124, 127.
Benson v. Henkel, 198 U. S., 1.
Revised Statutes U. S., Sec. 764.
Beavers vs. Henkel, 194 U. S., 73.
Beavers vs. Haubert, 198 U. S., 77
Pierce vs. Creecy, 210 U. S., 387.

II.

It was error to hold the defendant for removal to the District of Columbia for trial. Indictments, charging similar offenses to have been committed in the State of New York, had been previously found against him in the Southern District of New York upon which he was at that time enlarged on bail, awaiting trial, after having demurred to the indictments and moved to quash the same. His application by habeas corpus to be discharged from custody should have been granted as he has a constitutional right in this case to be tried, if at all, in the Southern District of New York.

It is the constitutional right of a person accused of crime to be tried in the State "where the said crimes shall have been committed."

Constitution, Art. 3, Sec. 2, C. 3.

In the case at bar, on the same day that the four Washington indictments were returned against the defendant Haas, four indictments charging similar offenses were filed against him by a Grand Jury of the Circuit Court held in the Southern District of New York. In each of said four New York indictments he is joined as a defendant with the same defendants as in the four Washington indictments and in each the completed offense is alleged to have been performed in the jurisdiction where the respective indictments were found. For instance, in the four Washington indictments the conspiracy is alleged to have been entered into in the District of Columbia; whereas in the four New York indictments the same conspiracy is alleged to have been entered into in the Southern District of New York. Each of the eight indictments charges a completed offense, as will be hereafter seen when the indictments are discussed in detail.

Judge Ward in commenting upon this situation said:

> "May 29, 1908, four indictments were pre-
> "sented to the Supreme Court of the District
> "of Columbia * * * * * * On the
> "same day exactly the same indictments were
> "found in the United States Circuit Court for
> "the Southern District of New York charg-
> "ing the same offenses to have been there
> "committed and by the same parties," (see Opinion of Ward, J., 166 F. R. at pp. 623 and 624):

When the New York indictments were returned the defendant Haas, was as aforesaid, apprehended and admitted to bail. He moved to quash the indictments and demurred to the sufficiency thereof, so that at the time of the institution of these proceedings to remove him to the District of Columbia for trial upon the indictments there found against him, the Circuit Court of the United States for the Southern District of New York had taken jurisdiction of the case and of the person of the defendant; and at the time of the order made by the Commissioner for his commitment to await the warrant of removal of the District Judge, the proceedings under the New York indictments had progressed to the extent that the defendant's objections by demurrer and motion to quash had been overruled and he was enlarged on bail to await trial in the Southern District of New York.

Realizing undoubtedly that the proceedings to remove the defendant to Washington were irregular, the United States Attorney for the Southern District of New York, *over three months after the removal proceedings had been in fact instituted and while they were pending* (fols 754-755), moved the Circuit Court

> "For the consent of the said Circuit
> "Court that the United States Attorney for
> "the Southern District of New York proceed
> "with proceedings for the removal of the de-
> "fendant Moses Haas to the District of Co-
> "lumbia in accordance with provisions of
> "Revised Statutes, Section 1014."

This motion was strenuously opposed by the defendant Haas, who filed an affidavit in which he stated in substance that he had resided in the City

of New York in the Southern District of New York for sixteen years, and submitted to the Court that he was entitled to be tried by a jury of the district of his residence. In this affidavit the defendant set forth at length the proceedings under which he was held in the Southern District of New York, and urged to the Court that he should not be put to the expense of taking his witnesses and counsel to Washington for trial before a foreign jury when he could be tried in the Southern District of New York upon indictments charging exactly the same offenses for which it was desired to remove him to the District of Columbia.

The District Judge who heard the argument of this motion expressed himself to the effect that he could not see the necessity thereof; and, in the opinion granting the motion, merely said in effect that the District of Columbia had a right to pursue any legal remedies to which it might deem itself entitled; but the question of the doubtful right of the Government to proceed against a defendant in two jurisdictions at the same time, upon two sets of indictments, each charging similar completed offenses, was not passed upon, although urged at length by counsel for the defendant. (See Affidavit of Moses Haas, fols. 768-774; and Order and Decision, fols. 775-778). This motion for the consent of the Circuit Court undoubtedly originated in the theory of counsel for the Government that Beavers v. Haubert, 198 U. S., 77, was applicable. The case at bar, however is radically different from that case, and the principles there enunciated have no application here.

In the Beavers v. Haubert case, supra, the defendant contended that while certain indictments

were pending against him in the Eastern District of New York he could not be removed upon other charges to the District of Columbia. This Court, Mr. Justice McKenna writing the opinion, held that the theory of exclusive jurisdiction was primarily the right of the Court or sovereignty itself, and decided the case upon the proposition that a defendant charged with more than one crime in two jurisdictions has no constitutional right to the trial of one charge in advance of the other. The opinion reiterates the constitutional prerogative of a defendant to a speedy trial by a jury of the district where it is alleged the offense was committed (see p. 86).

The vital difference, however, between the Beavers v. Haubert case and the one at bar is that here we have a defendant *charged with having committed the same offenses in two jurisdictions*. Manifestly when the conspiracy was entered into in the Southern District of New York and an overt act committed in pursuance thereof it had become a completed act in the Southern District of New York, and identically the same conspiracy could not be entered into at the same time in the District of Columbia. In other words, a crime cannot be a completed offense in two jurisdictions. There must come a time when the offense is complete and, when so complete, it is indictable and is to be tried in the jurisdiction where the crime is committed.

A careful examination of the printed record in the Beavers-Haubert case discloses the radical distinction between that case and the case at bar. In the Beavers-Haubert case, supra, three indictments were found against the defendant Beavers

in the Eastern District of New York in the month of July, 1903. These indictments charged the defendant with the crime of violating Sections 1781 and 1782 of the Revised Statutes. Over two months thereafter an indictment was found against Beavers in the District of Columbia charging him with having violated Section 5501 of the Revised Statutes. In other words, he was charged in the Eastern District of New York with one crime and in the District of Columbia with another crime. He was not charged with having committed and completed the same crime in each of the two jurisdictions as is the case here. This Court therefore held, as above stated, that Mr. Beavers was guaranteed by the constitution a speedy trial in the district where the crime was committed; he was not guaranteed that the trial for one offense would have precedence over the trial of another. He was charged with two distinct substantive offenses. The indictments in New York did not charge him with having violated Section 5501 of the Revised Statutes and the indictment upon which removal was sought to the District of Columbia and upon which the Court rested its decision, did not charge him with a violation of Sections 1781 and 1782 of the Revised Statutes.

See printed record of Beavers-Haubert case for indictments as follows:

District of Columbia indictment, pages 7-12.

New York indictments page 12-22; 22-35; 35-41.

In the Beavers-Haubert case there is also a suggestion in the syllabus that the Circuit Court

consented to the removal of Beavers to Washington for trial, but an examination of the record shows that there was no express consent as evidenced by an order to that effect. There was merely tacit acquiescence on the part of the Circuit Court in the matter. It appears that when proceedings under the New York indictments came on before the Court, counsel for the government requested that they be held in statu quo for a while so that proceedings on removal for the Washington indictment could be proceeded with. The Court thereupon granted adjournments from time to time at the request of counsel for the government, but there was no order or formal consent to the removal proceedings. Furthermore, Judge Thomas in dismissing the writ of habeas corpus, which act this Court affirmed, used the following language:

> "And when, as in the present instance, the "Attorney General asks that the defendant be "removed to another district to meet an in- "dictment against him there found, and the "District Attorney of this district co-operates "for such removal, the Court may at least in "the exercise of a sound judgment, permit "such removal upon a proper case being made "therefor. *This does not mean that the de- "fendant may be removed to another district* "under conditions which would disturb the "due administration of justice in the court "where the defendant is held at the time nor "*where the removal would work an injustice* "*to the defendant in respect to the indictment* "*pending in such court.*"
>
> (See opinion of Judge Thomas page 29 of printed record Beavers v. Haubert, No. 355 (19 455).

All of the argument of Judge Thomas upon

which the Beavers-Haubert case was decided and affirmed by this Court, rests upon the proposition that while the defendant is entitled to be tried in the district where the crime charged against him was committed, still if he is charged with the commission of two crimes in two different districts, there is no constitutional guarantee to him that he will be tried in one district in preference to the other.

This argument has no application to this case, however, because here the defendant is not charged with the commission of two substantive offenses in two jurisdictions, but he is charged with having committed the same completed offenses in New York and Washington, and being a resident of New York, he is therefore entitled to be tried in that jurisdiction because the government has alleged that the same crimes for which it is now sought to remove him to the District of Columbia was, in fact, committed in the Southern District of New York.

Beavers v. Haubert, supra, went to the proposition that where a defendant is under federal indictments in two different jurisdictions for two different offenses, that no constitutional right is violated by his prior trial in either district. The case at bar goes to the proposition that a defendant indicted in two jurisdictions for the same offense has a constitutional right to be tried in the district where the offense was committed, particularly if that district is the district of his residence.

While exclusive jurisdiction has been held by this Court to be primarily a right of the Court or sovereignty, it is still held that the Court where an offense is alleged by indictment to have been

committed is without jurisdiction to order the removal of the defendant to another jurisdiction for trial upon the same offense.

In Armour Packing Company v. United States, 209 U. S., 56, this Court had under consideration indictments predicated upon violations of the so-called Elkins act of February 19th, 1903, and held that during transportation the crime was being constantly committed, or, in other words, that during transportation the violation of the act was a continuing crime, but the Court added:

> "*It does not follow from this view of the* "*character of the offense that a single trans-* "*portation of goods can be made the basis of* "*repeated separate criminal charges in each* "*of the districts through which the transpor-* "*tation at an illegal rate is had.* Take the "present case. The charge is of a single con- "tinuous carriage from Kansas City to New "York at a concession from the legal rate for "the part of the carriage between the Missis- "sippi River and New York of twelve cents "for each one hundred pounds so transported. "This is a single continuing offense, not a "series of offenses, although it is continuously "committed in each district through which "the transportation is received at the prohib- "ited rate."

The New York indictments charge the conspiracy to have been committed in that jurisdiction and as this was the residence of the defendant and he had been apprehended upon these indictments and was held for trial, he has a constitutional right to be tried, if at all, in the Southern District of New York. Section 731 of the Revised Statutes of the United States does not aid the Government in its contention. That section provides

> "When any offense against the United
> "States is begun in one judicial circuit and
> "completed in another, it shall be deemed
> "to have been committed in either and may
> "be dealt with, inquired of, tried, deter-
> "mined and punished in either district in
> "the same manner as if it had been actually
> "and wholly committed therein."

The language of this section, given its full meaning, while it undoubtedly permits the prosecution of a defendant in one of two districts, does not permit his prosecution in both districts at the same time for the same offense.

The New York indictments are still pending against the defendant Haas; they have not been *nolle prossed* or quashed. Furthermore, the indictments do not charge that the crime was committed in one district and completed in another; or, in other words, that the conspiracy was commenced in the District of Columbia and completed in the Southern District of New York; but it is alleged in the Washington indictments that the completed acts of conspiracy occurred in the District of Columbia, and it is alleged in the New York indictments that the same completed acts of conspiracy occurred in the Southern District of New York.

This Court has repeatedly held that the conspiracy itself is the gist of the offense, and in charging the defendant with having committed the crime of conspiracy in the Southern District of New York the Government elected its forum and the defendant is, constitutionally, entitled to be there tried.

It has become quite the habit of late in criminal prosecutions for the representatives of the Gov-

ernment to seek the trial of defendants in the District of Columbia. This presumably because such defendants are thereupon taken to a foreign jurisdiction where they are unknown and subjected to the enormous expense of transporting witnesses and of preparing for trial at such distant point. This use of the criminal statutes makes them oppressive and invades the constitutional right of a citizen to a speedy trial in the district of his residence, provided the crime of which he stands accused was there committed.

Had the Government in this case charged the alleged conspiracies to have had their inception in the Southern District of New York and to have been completed in the District of Columbia a different situation would be presented and possibly then, under the provisions of Section 731 of the Revised Statutes, a removal to the District of Columbia might be proper. This case, however, more than any other which has been presented to this Court in recent years, discloses the great and unusual hardship which may be inflicted upon a defendant accused of crime by over-zealous Government officials who seek to transport such defendant from his home to a possibly unfriendly jurisdiction for trial. In its entirety as disclosed by the record, the case might be said to well illustrate the abuse to which criminal process can be perverted and the unusual disgrace, torment and oppressive tactics to which a defendant may be subjected. In all, eleven indictments have been returned against the defendant Haas. Upon the first set of indictments he has been twice discharged. Permitting the matter to rest in *statu quo* for a period of years he is again indicted and in two sets of indictments he is charged with having committed the same

crime at the same time in two jurisdictions. Apprehended in the district of his residence upon indictments there found against him, he is held for trial, and the Government then announces its desire to remove him to the District of Columbia for trial there upon the sole ground that the convenience of the witnesses for the Government and the convenience of the Department of Justice will be promoted by the change (see Letter of Attorney General Bonaparte attached to moving papers, fols. 762-765).

In answer to this, the defendant asserts in this Court his constitutional right to be tried if at all in the Southern District of New York,where he resides and where he stands accused of the commission of the same crimes upon which removal is now sought to the District of Columbia. Why should the defendant be subjected to the expense of going to the District of Columbia for trial? Full justice can be obtained by the Government in the Southern District of New York,the indictments there charge the same offenses as the indictments in the District of Columbia. Is it to be tolerated that the defendant, for the mere convenience of the Department of Justice is to be taken in violation of his constitutional right to the District of Columbia for trial? If the defendant is removed to Washington and tried before a jury and the jury disagree can he be thereupon tried in the Southern District of New York for the same offense? And if upon such retrial the jury in New York should again disagree, could the next trial be had in Washington? In other words, can the Government by finding two sets of indictments in two jurisdictions for the same offense take a defendant at its option from one jurisdiction to another for trial in the hope that a conviction will finally result? This Court has again

and again reiterated the rule that criminal process must not be made oppressive, and that the constitutional and statutory rights of one accused of crime are always to be strictly indulged in his favor. Judicial decisions like statutory enactments must be construed in the light of what it is possible to do under them.

Mr. Justice Brewer, writing the opinion of this Court in Beavers v. Henkel, 194 U. S., 73, said:

> "It may be conceded that no such removal should be summarily and arbitrarily made. There are risks and burdens attending it which ought not to be needlessly cast upon any individual. These may not be serious in a removal from New York to Brooklyn, but might be if the removal was from San Francisco to New York. And statutory provisions must be interpreted in the light of all that may be done under them. We must never forget that in controversies, civil or criminal, between the Government and an individual, the latter is entitled to reasonable protection."

And again at page 85—

> "The existense of probable cause is not made more certain by two inquiries and two indictments."

In Hyde v. Shine, 199 U. S., 62, Mr. Justice Brown writing, this Court used the following very pertinent language:

> "Indeed the Constitution itself requires that the trial of all crimes shall be held in the State where the crimes have been committed, and the power of Congress to order the surrender of accused persons from other states is a necessary complement to

" the duty of trying offenses in the jurisdic-
" tion where the crime was committed. *But*
" *we do not wish to be understood as approving*
" *the practice of indicting citizens of distant*
" *States in the Courts of this district where*
" *an indictment will lie in the State of the*
" *domicile of such person, unless in exceptional*
" *cases where the circumstances seem to de-*
" *mand that this course shall be taken.*

" To require a citizen to undertake a long
" journey across the continent to face his ac-
" cusers, and to incur the expense of taking
" his witnesses and of employing counsel in
" a distant city, involves a serious hardship
" to which he ought not to be subjected if
" the action can be tried in a Court of his
" own jurisdiction."

In the case at bar indictments have been found in the State of the domicile of the defendant, to-wit: The State of New York, and the case can be tried in a court of the defendant's jurisdiction. There is no reason why he should be taken to the District of Columbia for trial, and every reason—both constitutional and statutory—why the trial should proceed in the Southern District of New York.

In the Hyde case, supra, Mr. Justice Peckham, Mr. Justice White, and Mr. Justice McKenna in dissenting, stated their belief that the enforcement of the criminal law should not be made oppressive (see page 87).

In Tinsley v. Treat, 205 U. S., 20, Mr. Chief Justice Fuller, writing the opinion of the Court, after referring to the constitutional right of a defendant to be tried by an impartial jury of the State and district wherein the crime shall have been committed, states:

> " And in order that any one accused shall
> " not be deprived of this constitutional right,
> " the Judge applied to, to remove him from
> " his domicile to a district in another State,
> " must find that there is probable cause for
> " believing *him to have committed the alleged*
> " *offense and in such other district.*"

Was there probable cause in this case for the Commissioner to believe that the defendant Haas had committed the alleged offense in the District of Columbia? The Government, by indictments found in the Southern District of New York had accused the defendant of having committed the crimes in that jurisdiction. They had apprehended him upon these indictments and had enlarged him upon bail. How could the Commissioner say from these two sets of indictments, charging the same offenses, that there was any more reason to believe that they were committed in the District of Columbia than that they were committed in the Southern District of New York? Each set of indictments was entitled to the same legal force. The proceedings before the Commissioner, as far as the Government was concerned, rested solely upon the indictments as evidence of probable cause. Could the Commissioner attach any more weight to the indictments in the District of Columbia than he did to those in the Southern District of New York? Which jurisdiction will the Government say was the real situs of these alleged crimes. A man cannot burn the same building at the same time in two different localities; one cannot steal from the same person at the same time in two different jurisdictions. If these conspiracies were entered into in New York, as charged by the New York indictments, then manifestly they were not entered into in the District of Columbia. We submit that upon

the facts as presented to the Commissioner there was not sufficient evidence of probable cause to warrant him in committing the defendant Haas for removal to Washington—but that there was every reason why such removal should have been denied and the defendant afforded a speedy trial in the place of his domicile.

In United States v. Marx, 122 Fed. Rep., 964, an indictment was found which alleged in substance

> "That on the 6th day of May, 1902, the "defendants, by name, of the Eastern Dis- "trict of Virginia, did, in the City of Wash- "ington, in the District of Columbia, and at "Norfolk, Virginia, in the Eastern District "of Virginia, and within the jurisdiction of "this Court, then and there unlawfully and "corruptly conspire to defraud the United "States by confederating, combining and "agreeing together to do certain unlawful "acts mentioned."

A demurrer to this indictment was sustained, it being held:

> "This clause clearly lays the venue both "in the District of Columbia and at Nor- "folk, in the Eastern District of Virginia, "and there is nothing in the indictment "from which it can be ascertained with any "degree of accuracy or certainty within "which jurisdiction, whether of this Court "or that of the District of Columbia, it is "proposed to charge the crime to have been "committed."

The argument used in the Marx case, supra, is applicable to the indictments here. Although there are two separate sets of indictments, still the venue of the same offenses is laid in the Southern District

of New York and in the District of Columbia. In the Washington indictments the defendants are described as residents of the District of Columbia, and the crimes are alleged to have been committed in the District of Columbia. In the New York indictments the defendants are alleged to be residents of New York and the crimes are alleged to have been committed in New York. How can it be ascertained, therefore, as suggested in the Marx case, with any degree of accuracy or certainty within which jurisdiction—either of the State of New York or of the District of Columbia—it is proposed to charge the crimes to have been committed?

In United States v. Sauer, 88 Fed. Rep., 249, an application was made to a District Judge for an order of removal founded on an indictment and bench warrant from the District Court for the Eastern District of Pennsylvania. The question as to the proper locus of the crime was directly in issue, and it was held

> "The only question with which I shall "have to deal is whether, upon reading the "indictment and warrant shown as the "ground of removal, it appears that the of- "fense charged is triable in the Eastern "District of Pennsylvania. *If the Court there "has no jurisdiction of the offense because it "was not committed in that district, the order "for removal cannot properly be made.*"

The warrant of removal was denied and the defendant was discharged.

The Commissioner in passing upon this case had before him a series of indictments introduced in evidence, showing that the government had

charged the same offense to have been committed and completed in the Southern District of New York. He could, we submit, have taken judicial notice of these indictments, but that question is not in the case, because the indictments were correctly introduced and received in evidence.

See also:
Nashville, &c., v. Alabama, 128 U. S., 96.
In re Palliser, 136 U. S., 257.
Horner v. U. S., 143 U. S., 207.
Hyde v. Shine, 199 U. S., 62.
Georgia v. Bolton, 11 Fed. Rep., 217.
United States v. Hackett, 29 Fed. Rep., 848.
In re Rosdeitscher, 33 Fed. Rep., 657.
Ex Parte Pritchard, 43 Fed. Rep., 915.
In re Kelley, 46 Fed. Rep. at page 654.
In re King, 51 Fed. Rep., 434.
United States v. Fowkes, 53 Fed. Rep., 13.
United States v. Howell, 56 Fed. Rep., 21.
United States v. Peterson, 64 Fed. Rep., 145.
In re Huntington, 68 Fed. Rep., 881.
Ex parte Ballinger, 88 Fed. Rep., 781.
United States v. Murphy, 91 Fed. Rep., 120.
In re Belknap, 96 Fed. Rep., 614.
United States v. Alberty, 24 Fed. Cas., 765.
United States v. Bickford, 24 Fed Cas., 1144.
United States v. Bird, 24 Fed. Cas., 1148.
United States v. Britton, 24 Fed. Cas., 1239.
United States v. Jackalow, 1 Black., 484.

Diamond v. Shine, 199 U. S., 88, is not in conflict with these contentions for the reason that that case was dealing with an offense initiated in one district and completed in another—an entirely dif-

ferent state of facts from those presented by the case at bar. Neither set—the New York or Washington indictments—allege the offenses to have begun in one district and completed in the other, but both allege the inception of the crimes and their completion in the District where the indictments are found.

We submit that there can be but one time when a crime is complete, and that as the New York indictments aver a completed offense, the defendant is entitled to be tried in that jurisdiction.

This case presents the unusual situation of the Government attempting to establish that the same crimes can be twice completed, an anomalous proposition—the condemnation of which is contained in its mere statement.

That the offenses charged in the Washington indictments of 1908 are identical with those charged in the New York indictments is readily shown by placing them in parallel columns, as follows:

Washington Indictment No. 26,087.	New York Indictment.
That on the thirty-first day of May, in the year nineteen hundred and five, at the District of Columbia aforesaid, said Moses Haas and said Frederick A. Peckham unlawfuly did conspire, combine, confederate and agree together with said Lewis C. Van Riper, who is not made a defendant herein, to commit an offense	That on the thirty-first day of May, in the year nineteen hundred and five, in the City of New York and the Southern District of New York, said Moses Haasand said Frederick A. Peckham unlawfully did conspire, combine, confederate and agree together with said Lewis C. Van Riper, who is not made a defendant here-

against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States, and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, Junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, Junior, to do certain acts in violation of his lawful duty, that is to say, to induce him, the said Edwin S. Holmes, Junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, Junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton crop report, which was to be

in, to commit an offense against the United States; that is to say, the offense of promising, offering and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, Junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, Junior, to do certain acts in violation of his lawful duty, that is to say, to induce him, the said Edwin S. Holmes, Junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, Junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton crop report,

issued, as hereinbefore set forth, in the month of June next ensuing, and in advance of the time when the matter and information contained in such cotton crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Frederick A. Peckham and the said Lewis C. Van Riper, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by the said Edwin S. Holmes, Junior, in the performance of his duty as such associate statistician.

WASHINGTON INDICTMENT No. 26,089.

That on the thirty-first day of May, in the year nineteen hundred and five, at the City of Washington, in the District of Columbia, one Moses Haas and one Theodore H. Price unlawfully did conspire, combine, confederate and agree together to commit an offense against the United States; that is to say, the offense of promising, offering and giving to

which was to be issued as hereinbefore set forth, in the month of June next ensuing, and in advance of the time when the matter and information contained in such cotton crop report could lawfully be made public to furnish, in so far as in him the power lay, to the said Moses Haas and the said Frederick A. Peckham and the said Lewis C. Van Riper, the statistics, matter and information which were to be obtained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, Junior, in the performance of his duty as such associate statistician.

NEW YORK INDICTMENT.

That on the thirty-first day of May, in the year nineteen hundred and five, in the City of New York and the Southern District of New York, one Moses Haas and one Theodore H. Price unlawfully did conspire, combine, confederate and agree together to commit an offense against the United States; that is to say, the offense of promising, offering and giving to

an officer of the United States, and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, Junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, Junior, to do certain acts in violation of his lawful duty; that is to say, to induce him, the said Edwin S. Holmes, Junior, unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, Junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton crop report, which was to be issued as hereinbefore set forth, in the month of June next ensuing, and in advance of the time when the mat-

an officer of the United States, a person acting for and on behalf of the said United States in an official function under and by virtue of a certain department and office of the Government thereof; that is to say, to the said Edwin S. Holmes, Junior, associate statistician of the said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, Junior, to do certain acts in violation of his lawful duty; that is to say, to induce him, the said Edwin S. Holmes, Junior, to unlawfully and in violation of the said duty of him, the said Edwin S. Holmes, Junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issue and publication of the said cotton crop report, which was to be issued as hereinbefore set forth, in the month of June next ensuing, and in advance of the

ter and information contained in such cotton crop report could be lawfully made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Theodore H. Price, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, Junior, in performance of his duty as such associate statistician.

time when the matter and information contained in such cotton crop report could lawfully be made public, to furnish, in so far as in him the power lay, to the said Moses Haas and the said Theodore H. Price, the statistics, matter and information which were to be contained in said report, knowledge of which was, as aforesaid, acquired by said Edwin S. Holmes, Junior, in performance of his duty as such associate statistician.

WASHINGTON INDICTMENT No. 26,089.

The said Moses Haas and the said Theodore H. Price unlawfully did conspire, combine, confederate and agree together to commit an offense against the United States, that is to say, the offense of promising, offering and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, Junior, associate statistician, of the

NEW YORK INDICTMENT.

The said Moses Haas and the said Theodore H. Price unlawfully did conspire, combine, confederate and agree together to commit an offense against the United States, that is to say, the offense of promising, offering and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function under and by virtue of a certain department and office of the government thereof; that is to say, to the said Edwin S. Holmes, Junior, associate statistician, of the

said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, Junior, to do certain acts in violation of his lawful duty; that is to say, &c.

said Bureau of Statistics as aforesaid, a sum of money, the amount of which is to the grand jurors aforesaid unknown, to induce him, the said Edwin S. Holmes, Junior, to do certain acts in violation of his lawful duty; that is to say, &c.

WASHINGTON INDICTMENT No. 26,086.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that Moses Haas, Edwin S. Holmes, Junior, and Frederick A. Peckham, each late of the District of Columbia, on the thirty-first day of May, in the year of Our Lord one thousand nine hundred and five at and within the said District of Columbia, unlawfully did knowingly conspire, combine, confederate and agree together, and with one Lewis C. Van Riper, who is not made a defendant herein, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton crop report to be issued and published by the said department and bureau in the then

NEW YORK INDICTMENT.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that Moses Haas, Edwin S. Holmes, Junior, and Frederick A. Peckham, each late of the City of New York in the said Southern District of New York on the thirty-first day of May, in the year of our Lord one thousand nine hundred and five at and within the said Southern District of New York, unlawfully did knowingly conspire, combine, confederate and agree together, with one Lewis C. Van Riper, who is not made a defendant herein to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton crop report to be issued and published by the said department and

next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described; that is to say, &c.

WASHINGTON INDICTMENT No. 26,088.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that Theodore H. Price, Moses Haas and Edwin S. Holmes, Junior, each late of the District of Columbia, on the thirty-first day of May in the year of our Lord nineteen hundred and five, at the said District of Columbia, unlawfully did knowingly conspire, combine, confederate and agree together and with divers other persons to the said grand jurors unknown, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton crop report, to be issued and published by bureau in the then next succeeding month of June and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, to be accomplished by means and methods and under the circumstances and conditions now here set forth and described; that is to say, &c.

NEW YORK INDICTMENT.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that Theodore H. Price, Moses Haas and Edwin S. Holmes, Junior, each late of the City of New York, in the said Southern District of New York, on the thirty-first day of May in the year nineteen hundred and five, at and within the said City and Southern District of New York, unlawfully did knowingly conspire, combine, confederate and agree together and with divers other persons to the said grand jurors unknown, to defraud the United States of and concerning its governmental functions in the matter of issuing and publishing the

the said department and bureau in the then next succeeding month of June, and of its rights to administer an intelligent and honest service in that behalf in the interests of the people of the United States to be accomplished by means and methods and under the circumstances and conditions now here set forth and described, that is to say, &c.

cotton crop report to be issued and published by the said department and bureau in the next succeeding month of June, and of its right to administer an honest service in that behalf in the interests of the people of the United States to be accomplished by the means and methods and under the circumstances and conditions now here set forth and described, that is to say, &c.

WASHINGTON INDICTMENT No. 26,088.

That on the fifteenth day of November, in the year nineteen hundred and four, and continuously and at all times between said fifteenth day of November, nineteen hundred and four, and the fifth day of July, nineteen hundred and five, and on said day last aforesaid, and at the District of Columbia aforesaid the said Edwin S. Holmes, Junior, Theodore H. Price and Moses Haas unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together with certain other persons to the grand jurors aforesaid unknown, to defraud the United States in the dis-

NEW YORK INDICTMENT.

That on the fifteenth day of November, in the year nineteen hundred and four, and continuously and at all times between said fifteenth day of November, nineteen hundred and four, and the fifth day of July, nineteen hundred and five, and on said day last aforesaid, at the City of New York in the Southern District of New York, the said Edwin S. Holmes, Junior, Theodore H. Price and Moses Haas, unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together with certain other persons to the grand jurors aforesaid unknown to

honest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement following, that is to say, that in violation of the said duty of him the said Edwin S. Holmes, Junior, as such associate statistician, honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such assoate statistician, and in advance of the official issuance and publication of each of said cotton crop reports, as hereinbefore set forth, and in advance of the time or times when the matter and information contained in each of said cotton crop reports could lawfully be made public, and to prevent, obstruct and impair the due and orderly administration of the business and affairs of said department of argiculture, and to the prejudjce of said United States, he said Edwin S. Holmes, Junior, should and would thereafter, in so far as in him the power lay, furnish to the said Moses Haas and to the said Theodore H. Price the statistics and matter and information which

defraud the United States in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement following, that is to say: that in violation of the said duty of him, the said Edwin S. Holmes, Junior, as such associate statistician honestly and carefully to keep secret all statistics and statistical matter and information, knowledge of which was acquired by him as aforesaid as such associate statistician, and in advance of the official issuance and publication of each of said cotton crop reports, As hereinbefore set forth, and in advance of the time or times when the matter and information contained in each of said cotton crop reports could lawfully be made public, and to prevent, obstruct and impair the due and orderly administration of the business and affairs of said department of agriculture and to the prejudice of the United States, he the said Edwin S. Holmes, Junior, should and would thereafter, in so far as in him the power lay, furnish to the said Moses Haas and to the said Theo-

were to be contained in each of said cotton crop reports, knowledge of which was, as aforesaid, acquired by the said Edwin S .Holmes, Junior, in the performance of his duty as such associate statistician.

dore II. Price the statistics, and matter and information which were to be contained in each of said cotton crop reports, knowledge of which was, as aforesaid, acquired by the said Edwin S. Holmes, Junior, in the performance of his duty as such associate statistician.

WASHINGTON INDICTMENT.

No. 26088.

On the day in this Count mentioned at the District Court of Columbia aforesaid, the said Edwin S. Holmes, Junior, the said Moses Haas and the said Theodore H. Price unlawfully, corruptly and fraudulently did conspire, combine and confederate and agree together and with divers other persons to the grand jurors aforesaid unknown to defraud the United States in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement following, that is to say, &c.

NEW YORK INDICTMENT.

On the day in this count mentioned, at the City of New York, in the said Southern District of New York, the said Edwin S. Holmes, Junior, the said Moses Haas and the said Theodore H. Price unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together and with divers other persons to the grand jurors aforesaid unknown to defraud the United States in the dishonest and corrupt manner and through and by means of the dishonest and corrupt scheme and arrangement following, that is to say, &c.

There was absolute proof before the Commissioner, by the two sets of indictments, that the same crimes upon which removal was sought to

the District of Columbia were charged to have been committed in the Southern District of New York, the place of defendant's residence. There was an entire absence of probable cause for the Commissioner to believe that the defendant Haas had committed the crimes in the District of Columbia, and he was, therefore, without jurisdiction to commit him for removal and should have discharged him. The right of the Commissioner to hold the defendant at all must always rest upon the proposition that he can be tried for the offenses charged against him in the district to which removal is sought. For this jurisdictional defect in the proceedings the defendant Haas should have been discharged by the Commissioner.

III.

The indictments did not confer jurisdiction upon the Commissioner to commit the defendant for removal to the District of Columbia, and there was an entire absence of probable cause for the reason that the indictments do not allege an illegal conspiracy to commit any offense against the United States.

The indictments found in the District of Columbia for conspiracy to commit an offense against the United States, are Indictment No. 26,087, (fols. 256-268), the fourth, sixth and eighth counts of Indictment No. 26,088 (fols. 286-337), and Indictment No. 26,089 (fols. 339-355).

Indictment No. 26,087 in substance charges the defendants Haas and Peckham with conspiring

to commit an offense against the United States; that is—the offense of violating Section 5451 of the Revised Statutes, by offering a sum of money to Holmes to induce him to violate his lawful duty and give out information in advance of the probable contents of the cotton crop report.

The fourth and eighth counts of Indictment No. 26,088 in substance allege that Holmes, Haas and Peckham conspired to induce Holmes to cause the cotton crop reports to be inaccurate; while the sixth count of the same indictment alleges a conspiracy of the same parties, including Holmes, to induce Holmes to commit the alleged crime of misconduct in office.

Indictment No. 26,089 is a repetition in two counts of the charges of bribery of Holmes, to induce him to give out advance information and to make the reports untrue.

The indictments relative to the charge of conspiracy to commit an offense against the United States are, therefore, resolved into three propositions:

1st. That it was an offense to conspire to induce Holmes to give out the reports on the condition of the cotton crop in advance.

2nd. That it was an offense to conspire with Holmes to induce Holmes to commit the crime of misconduct in his alleged office of associate statistician.

3rd. That it was an offense to conspire to in-

duce Holmes to cause the reports of the condition of the cotton crop to be inaccurate and untrue in the particulars alleged. (See Point V of this brief.)

At the outset of the discussion it may be stated as an elementary proposition that only crimes and offenses specifically enumerated by statute are indictable.

United States v. Cook, 17 Wall., 168-174.
United States v. Cruikshank et al., 92 U. S., 542.
United States v. Carll, 105 U. S., 611.
United States v. Britton, 108 U. S., 199.
United States v. Eaton, 144 U. S., 677.
Pettibone v. United States, 148 U. S., 197.
Greene v. Henkel, 183 U. S., 261.
United States v. Watson, 17 Fed. Rep., 145.
In re Wolfe and ano., 27 Fed. Rep., 606.
United States v. Wootten, 29 Fed. Rep., 702.
United States v. Adler, 49 Fed. Rep., 736.
United States v. Kessell, 62 Fed. Rep., 57.
In re Dana, 68 Fed. Rep., 886.
United States v. Benson, 70 Fed. Rep., 591.
United States v. McCord, 72 Fed. Rep., 159.
United States v. Sauer, 73 Fed. Rep., 671.
Drake v. Stewart, 76 Fed. Rep., 143.
United States v. Taffe, 87 Fed. Rep., 113.
Peters v. United States, 94 Fed. Rep., 127.
United States v. Milfi, 118 Fed. Rep., 899.
United States v. Dietrich, 126 Fed. Rep., 676.
Conrad v. United States, 127 Fed. Rep., 798.
Scott v. United States, 130 Fed. Rep., 429.
United States v. Thomas, 145 Fed. Rep., 74.
Morris v. United States, 161 Fed. Rep., 672.

As is well stated in United States v. Thomas, 145 Fed. Rep., 79:

> "There is not, and cannot be, any offense "against the United States, that is not against "the laws, for the reason declared over and over "again, until it is now commonplace, that we "have nothing but statutory crimes; and if an "act is against the law it is against the United "States, and if against the United States it is "because it is against the law, and by 'laws' is "meant 'statutory laws'.
> " * * * * * * * *
> "Section 5440 must be interpreted as though "standing alone. It covers all conspiracies, "and the subject of the conspiracy may be any "act covered by any criminal statute.

In the second place, it is established law that when the crime charged is conspiracy to do a criminal act, it must be shown that the act which is the purpose and object of the conspiracy is itself a violation of law.

> Conrad v. United States, 127 Fed. Rep. 798.

And, as stated in United States v. Boyer, 85 Fed. Rep., 425, where the offense charged was bribery of an inspector:

> "Had the inspector received the bribe it "would have been no offense against the laws "of the United States, for the reason that it "was intended to induce him not to do a thing "which no valid law of Congress imposed upon "him to do.

Section 5451 makes it unlawful to promise, offer, give, or cause to be promised, offered or given:

1. Any money or
2. Other thing of value, or
3. To make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or
4. For the delivery or conveyance of anything of value " to any officer of the United " States or to any person acting for or on " behalf of the United States in any official " ' function,' with intent to influence his de- " cision or action on any question, matter, " cause, or proceeding, which may at any " time be pending, or which may by law be " brought before him in his official capacity, " or in his place of trust or profit, or with in- " tent to influence him to commit, or aid in " committing, or to collude in or allow any " fraud, or make opportunity for the com- " mission of any fraud on the United States, " or to induce him to do or omit to do any " act in violation of his lawful duty."

Indictments under under Section 5440, charging conspiracy to violate the provisions of Section 5451 must therefore charge an intent to accomplish certain acts which when performed would constitute a violation of Section 5451, and the acts alleged to be criminal must constitute the specific offense prohibited by that section.

Under Section 5451 the party who makes the bribe must promise to give, or actually give, to the person bribed, money or something of value, or a " contract, undertaking, obligation, gratuity, " or security for the payment of money or for the " delivery or conveyance " of something of value.

The amount of money, or the value of the thing

promised to be given, should be stated with sufficient certainty in the indictment to show that the provisions of Section 5451 have been violated or would be violated if the conspiracy were carried out. In these indictments there is no averment (except as contained in the statement of an overt act) that the alleged conspirators gave Holmes any definite sum of money; the statement is " that they promised and offered to give him " a sum of money, "*the amount of which is to the* " *grand jurors aforesaid unknown.*" Further reference to the indictments, and particularly to those parts alleging the overt acts, shows that at the time the alleged conspiracy was entered into no definite sum of money could have been in the minds of the conspirators. It is therefore proper to look at the overt acts charged for the purpose of ascertaining the sense in which the terms are used in charging the conspiracy.

Stearns v. United States, 152 Fed R., 900.

The charge of the indictments upon this point is that the defendants did not part with any moneys or anything of any value at the time the conspiracy was entered into with Holmes, but that they promised to give him a share of the moneys acquired by the speculation in cotton, *provided* such speculation was successful. The specific averment of Indictment No. 26,087, with reference to this subject, is that the defendant Haas, in order to effect the object of the conspiracy " did promise and " offer to give to the said Edwin S. Holmes, " Junior, a certain share, to-wit: a sum equal to " one-fourth of whatever moneys they, the said " Moses Haas and Frederick A. Peckham and the " said Lewis C. Van Riper, or either of them, " should acquire through speculations in cotton

" based upon information to be furnished by the " said Edwin S. Holmes, Junior, to them, which " information was to be contained in the cotton " crop report issued in the month of June then " next ensuing," (fol. 266).

The offer and promise were, therefore, conditional, based upon the success of a future event. If the speculation was not successful then Holmes would receive nothing. The entire transaction may be likened to a mere gambling agreement. Holmes was not tendered any contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value. He received a promise that something would be done in the future *provided* the venture produced the money with which the payment could be made. We submit this was not a violation of the provisions of Section 5451, and that the statute manifestly contemplates that the party offering the bribe shall at that time part with something of value or deliver something to the party bribed which would have a value in the future. The point here urged was considered in *extenso* by Judge Ray in United States vs. Green, 136 Fed. Rep., page 640, where the decision, in substance, held that it must be shown that something of value is parted with by the party accused of bribing in order to constitute an act of bribery. If the speculation in cotton had resulted in a loss then Holmes would have received nothing, and the indictments do not allege that the venture was successful. Section 5451 does not extend to *conditional* speculative agreements, but is clear in making it a crime to promise or offer to give money or securities, or the payment of money or something of value. In this case the contract of the defendants was, as alleged

in the indictments, that *provided* they were successful in speculation, they would give Holmes a certain share. This was a conditional speculative agreement not within the condemnation of Section 5451. Again the promise made to Holmes by the defendants could not have been enforced by Holmes. The indictments do not allege any agreement on the part of the defendants to speculate in cotton. They were free to do so or not to do so. If they speculated, they were to give Holmes a share of the proceeds. If they did not speculate, the matter was at an end. Holmes did not have a contract for the payment of money or anything of value which he could enforce against the defendants. It is not a violation of Section 5451 to make a promise not enforcible.

> United States v. Greene, 136 Fed. Rep., 651.

See United States v. Crafton, 4 Dill, 145, 25 Fed. Cas., 681, 682, where contemplated fraud depended entirely upon the passage of a future act of Congress to make it effective.

See also United States v. Kessell, 62 Fed. Rep., 57, where it is held that the averments in the indictment, that the defendant asked a gratuity, the nature of which is to the grand jury unknown, did not constitute an allegation that the defendants had asked a gratuity of money or of property or anything of any value whatever. In the case at bar the indictments do not charge that the contract was of any value whatever to Holmes or that he would ever receive any money under it, or that he did in fact ever receive any money under it. The charge is that Holmes was to receive a sum of money, "the amount of which to the grand jurors aforesaid is unknown," and the amount which

Holmes was to receive is specificially averred in the overt acts to be "one-fourth" of the profits of the speculation.

In no view of Section 5451 can this arrangement or agreement to divide probable profits with Holmes be tortured into an offer of money or a thing of value or a contract, undertaking, obligation, gratuity or security for the payment of money, or for the delivery or conveyance of anything of value. We submit that the very essence of Section 5451 is that something of value must pass from the party bribing to the party bribed.

Furthermore, as we have shown in another point, the party to whom the thing of value is given must be an officer of the United States or a person acting for or on behalf of the United States in an official function under or by authority of a department or office of the government thereof, neither of which appellations can be applied to Holmes.

Again, the thing of value or bribe must be given with intent to influence the officer or person acting for or on behalf of the United States in an official function in his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity. We have argued in another point that there was nothing which could by law be brought before Holmes for decision because he was not occupying an official station, nor was there any statute applicable to the cotton crop report—either that they should be kept secret, or in any other respect defining the method or manner of their preparation.

The further provision of Section 5451, making it illegal to give or promise a thing of value for the purpose of inducing one to commit or collude in a fraud against the Government, is by reference to

the previous portions of the Section made exclusively applicable to officers of the United States or persons acting for or on behalf of the United States in an official function under or by authority of any department or office of the Government thereof. As Holmes was not an officer of the United States, and as there was no official function imposed by law upon the Secretary of Agriculture to keep the cotton crop reports secret, or to issue them in any particular manner, and as nothing of value was tendered to him, but only a promise that if speculations were successful he would receive one-fourth of the profits—how can it be maintained that the charges of conspiracy, contained in these indictments, given their broadest scope and meaning, sufficiently aver a violation of Section 5451 of the Revised Statutes.

To summarize our analysis of Section 5451, a violation of that section is not shown unless the following essentials are legally combined:

1st. The promise, offer or gift must be of something of present value, not of something which may or may not be valuable in the future.

2nd. A conditional promise of a share of probable or speculative profits, is not a promise, offer or gift of anything of value.

3rd. The promise, offer or gift must be to an officer of the United States or to a person acting for or on behalf of the United States in an official function under or by authority of a department or office of the Government thereof.

4th. The object of the promise, offer or gift must be with intent to influence the party bribed in his decision or action on some question, matter, cause or proceeding which may be pending, or which may

by law be brought before him in his official capacity.

5th. The promise, offer or gift, if intended to influence the party bribed to commit or allow a fraud against the Government, must be made by giving it to an officer of the United States or one acting in an official function, or, in other words, one carrying out a duty lawfully prescribed.

Tested by the above rules, the allegations of Indictment No. 26087, the fourth, sixth and eighth counts of Indictment No. 26088, and both counts of Indictment No. 26089, fail to charge the defendant Haas with having conspired to commit a crime or offense against the United States

While it is true that the conspiracy is the gist of the offense, it must still remain that in the first clause of Section 5440 the conspiracy to commit an offense against the United States must be an offense made penal by statute. The offense of bribery is made penal by Section 5451, and a charge of conspiracy under Section 5440 to violate the provisions of Section 5451 must allege those acts which are condemned by Section 5451. A conspiracy to do a lawful act is not an illegal conspiracy. A conspiracy to commit an act reprehensible in the forum of good morals is not an indictable conspiracy. Section 5440, above quoted, makes it unlawful only to conspire to commit an offense against the United States, that is an offense made punishable by statute.

In the recent case of Goldfield Consolidated Mines Company vs. Goldfield Miners Union, No. 220, 159 Fed. Rep., 500, an unlawful conspiracy is defined as

> "A combination between two or more per-
> "sons to do an unlawful or criminal act, or to
> "do a lawful act by criminal or unlawful
> "means.

In United States vs. Johnson, 26 Fed. Rep., 682, conspiracy is defined as

> "The corrupt agreeing together of two or
> "more persons to do by concerted action
> "*something unlawful either as a means or an*
> "*end.*

In United States vs. Lancaster, 44 Fed. Rep., 896, conspiracy is defined as

> "An unlawful confederacy or combination of
> "two or more persons to do an unlawful act
> "or have accomplished an unlawful purpose.

In United States vs. Benson, 70 Fed. Rep., 594, the Court held:

> "At common law conspiracy is defined to be
> "the unlawful confederacy and agreement of
> "two or more persons to do an unlawful act
> "by unlawful means.

In Drake vs. Stewart, 76 Fed. Rep., at page 142, we find this definition:

> "A conspiracy is the combination of two or
> "more persons by concerted action to accom-
> "plish a criminal or unlawful purpose, or some
> "purpose not in itself criminal by criminal or
> "unlawful means.

There is, therefore, a concurrence of authority to the effect that a conspiracy under Section 5440, in order to be an indictable offense, must have for its object the accomplishment of a criminal or unlawful purpose, or it must be the intent of the conspirators, in effectuating an act not in itself criminal or unlawful, to employ criminal or unlawful

means. In other words, the act sought to be perpetrated must be made a criminal offense by statute, or the means employed to accomplish an unlawful act must be prohibited by statute in order to bring the conspiracy within this section.

Upon the application of these fundamental rules, do these indictments charge a crime or offense against the United States? It is not a crime for parties to conspire unless they are seeking to accomplish some unlawful purpose, or unless they are conspiring to use illegal methods to effectuate a legal result. That the words in Section 5440 "conspire * * * * to commit an offense against the United States" refer only to statutory crimes is sustained by abundant authority.

Again, the indictments relating to Section 5451 Revised Statutes, are further defective in that they do not sufficiently allege an intent to violate the provisions of Section 5451. The charge is that the conspiracies were entered into to commit an offense against the United States by paying a sum of money to Edwin S. Holmes, Junior, "to induce him," &c., "to do certain acts in violation of his lawful duty."

Section 5451 provides that the bribery must be "with intent" to influence the decision, &c., or "with intent" to influence him, &c., or "to induce him to do or to omit to do any act in violation of his lawful duty." The intent is, therefore, the gravamen of the offense, and must be distinctly averred. This is held in numerous cases, a few only of which will be referred to to show the general policy of the law upon the subject.

United States v. Cruikshank, 92 U. S., 558.
United States v. Carll, 105 U. S., 612.

Bannon and Mulkey v. United States, 156 U. S., 466.
United States v. Jackson, 25 Fed. Rep., 548.
United States v. Van Lueven, 62 Fed. Rep., 69.
McCarty v. United States, 101 Fed. Rep., 113.
United States v. Post, 113 Fed. Rep., 854.
United States v. Greene, 136 Fed. Rep., 658.

In United States v. Post, *supra*, it was held:

"In this case, as in all offenses of this char-
"acter, the intention of the defendant is the
"very gist and substance of the fraud, which
"must necessarily be embodied in the scheme
"or artifice as a foundation for the violation of
"the law. Without such fraudulent intention
"it would be impossible to devise a scheme to
"defraud.

In United States v. Greene, *supra*, the indictment was under Section 5451, and it was held:

"The doing of the acts, etc., above men-
"tioned do not constitute an offense against
"the United States, unless done with the intent
"specified. Intent in some cases may be in-
"ferred. A man is presumed to intend the
"natural or known result of his act. Still an
"indictment for the commission of a statutory
"offense, when a particular intent is made a
"substantial element of the crime, must state
"the intent.

In United States v. Cruikshank, *supra*, it is said:

"If any essential element of the crime is
"omitted, such omission cannot be supplied by
"intendment or implication. The charge
"must be made directly and not inferentially,
"or by way of recital.

See also
United States v. Hess, 124 U. S., 483-486.
Pettibone v. United States, 148 U. S., 202.

See also
United States v. Fox, 95 U. S., 670.
People v. Lohman, 2 Barb., N. Y., 218.

Conrad v. United States, 127 Fed. Rep., 798, where it is held that an indictment for a conspiracy to commit the offense described in Section 3995, which failed to allege that the defendants conspired to "knowingly and wilfully" obstruct or retard the passage of the mails in the manner set out, was fatally defective.

The Court will further observe that the indictments fail to allege the intent with which the conspiracy was entered into. It is true that they use the words "to induce" Holmes to violate his duty, &c., but the word "induce" does not have the same legal effect or meaning as the word "intent."

In State v. Phelan, 60 S. W., 71, 74, in an indictment for obtaining goods under false pretenses, alleging that the defendant induced parties to sell certain goods to them, it was held that the word "induced" meant "moved," "urged," or "instigated," but that it could not be held to be an averment that the parties had, in fact, sold to the defendant.

In the Century Dictionary the word "induce" is defined as "to lead by persuasion or influence; " prevail upon; incite; bring on, or produce in any " way." In other words, the defendants here conspired to persuade or influence Holmes to violate his duty. This is not a sufficient allegation that at the time the conspiracy was entered into, it was done "with intent" to violate the provisions of Section 5451. The intent to conspire to commit a crime must exist at the time the conspiracy is entered into. The inducing, influencing, or persuading of Holmes was an act to take place after the conspiracy had been formed. That is, the minds of the conspirators must have been controlled by *criminal intent at the time they formed the conspiracy*, and not afterwards. This is the very gist of the offense under Section 5451, and the neces-

sity of a distinct averment of such intent cannot be supplied by implication, or other reference to the general contents of the indictment. There must be a distinct averment that at the time the conspiracy was entered into, it was done with criminal intent; nor does the use of the word "unlawfully" aid the indictment. An unlawful conspiracy is not necessarily one to commit a crime, as pointed out in the Greene case, where it is said that intent being the gravamen of the offense must be distinctly averred.

See also

United States v. Fox, 95 U. S., 670.
People v. Lohman, 2 Barb., N. Y., 218.

In the failure to allege this necessary averment of intent the indictments are again fatally defective.

IV.

The indictments did not confer jurisdiction upon the commissioner to commit the defendant for removal to the District of Columbia, and there was an absence of probable cause for the additional reason that the indictments do not allege an illegal conspiracy "to defraud the United States in any manner or for any purpose."

Section 5440 of the Revised Statutes contemplates two separate and distinct crimes. In this section a conspiracy is declared to be unlawful which has for its object,

First, the commission of any offense against the United States, or

Second, where the object is "to defraud the United States in any manner or for any purpose."

In a previous point of this brief, we have discussed the first subdivision of the section, relative to offenses against the United States, and we now consider those portions of the indictments which relate to an intent "to defraud the United States " in any manner or for any purpose."

When the indictments found in the District of Columbia, in 1905, were before Commissioner Ridgway, in the Southern District of New York, and subsequently before Judge Holt, in removal proceedings, which resulted in the discharge of the defendant, United States Judge Holt wrote as follows:

> " The second count of the complaint " charges that the acts in question defrauded " the government of the United States, but it " seems to me that this claim is entirely un- " tenable. Perhaps it is not necessary that in " all cases the United States be deprived of " money or property in order to be defrauded. " It was held in United States v. Bunting (D. " C.) 82 Fed., 883, that two persons were " guilty of a conspiracy to defraud the " United States when one of them, an appli- " cant for a government position, obtained an " appointment, by having the other assume " his name and pass the civil service exami " nation. But, in that case, the fraud upon " the United States was alleged under Sec- " tion 5418 of the United States Revised Stat- " utes, (U. S. Comp., St. 1901, p. 3666), which " provides that any person who utters or pre- " sents to any officer of the United States a " false writing for the purpose of defrauding " the United States is guilty of a crime. The " United States by that proceeding was de- " ceived and defrauded into appointing a per- " son to a public position who presumably " was not fit for it; but I cannot see that cases " of this kind have any bearing upon the " question whether Holmes, in divulging in-

"formation to one person which had been
"collected by the government for the purpose
"of being divulged to the public generally,
"defrauded the United States of anything by
"enabling the person to whom he divulged it
"to speculate and make money on the infor-
"mation. The United States was not de-
"frauded of anything. One citizen simply
"received information before others which
"was intended to be given to all the citizens,
"and which was collected for the purpose of
"being ultimately furnished to all."

United States v. Haas, 167 Fed. Rep., 215.

The precise question was also passed upon by United States Judge Ward, when he considered the 1908 indictments upon the present application for removal to the District of Columbia, and Judge Ward's conclusion was as follows:

"The petitioner next objects that the in-
"dictments set out no offense against the
"United States. The Department of Agri-
"culture was originally established by Act,
"March 15, 1862, c. 72, 12 Stat.387, and it
"was made an executive department, under
"the supervision of the Secretary of Agricul-
"ture, by Act, Feb. 9, 1889, c. 122, Sec. 1, 25
"Stat., 659. (U. S. Comp. Stat., 1901, p. 285).
"Its purpose was to diffuse useful informa-
"tion connected with agriculture, to procure
"and distribute new and valuable seeds and
"plants, to acquire and preserve information
"concerning agriculture by the collection of
"statistics, and to make an annual report to
"the President and to Congress. The De-
"partment of its own motion began to make
"monthly crop reports between June and De-
"cember of every year. Doubtless the gov-
"ernment established the department in the
"exercise of a governmental function, and
"the fraud contemplated by Section 5440,
"Rev. St. U. S., may be against the rights of
"the government, as well as against its prop-
"erty. Curley v. United States, 130 Fed. 9,
"64 C. C. A., 369. But no provision of law re-

" quires the statistics collected to be kept se-
" cret until the official publication of the
" monthly reports, and I cannot see that the
" United States was in any respect defrauded
" by the the publication of these statistics to
" individuals before the official publication
" to the country at large. There is no ground
" for presuming that Congress intended to
" prevent individuals from obtaining infor-
" mation in advance of its general publica-
" tion. Such persons would, of course, have
" an advantage in trading in common with
" others who had not that information; but I
" do not see that the United States would be
" in any way defrauded, either of its property
" or of its rights. We should not be induced,
" by our contempt for or indignation at such
" conduct as is set forth in the indictments,
" to turn it into a crime if it is not one.
" These were the views expressed by Holt, J.,
" in United States v. Haas, unreported, in the
" case of a similar indictment found in 1905.

" On the other hand, as the government evi-
" dently intended to supply the public with
" correct information, its whole purpose
" would not only be prevented, but actually
" reversed, if the department issued incorrect
" reports. A conspiracy to cause incorrect
" monthly reports to be published would be to
" defraud the United States, because it would
" change the department from an agency to
" enlighten the public into an agency to mis-
" lead it. It would be as if wreckers, in com-
" bination with persons connected with the
" location of channel buoys or with light
" houses, were to combine to move the buoys
" or extinguish the lights. Therefore, the
" third and seventh counts of indictment No.
" 26,088, which charge the petitioner with be-
" ing a party to such a conspiracy, in my
" opinion charge him with conspiracy to de-
" fraud the United States, which is made a
" crime by Section 5440, Rev. Stat. U. S."

Haas v. Henkel, 166 Fed Rep., 621, (626).

Considerable ambiguity and diversity of judicial opinion is to be found in the cases concerning the proper application and meaning of the words, " to " defraud the United States in any manner or for " any purpose."

In Curley vs. U. S., 130 Fed. Rep., 1, indictments were found under Section 5440, for defrauding the United States, in that a party seeking an appointment as letter carrier, a position in the classified civil service of the United States, unlawfully agreed with another person that the latter should falsely impersonate the applicant at the time of an examination and should sign the name of the applicant to a declaration sheet, which was by law required to be in the handwriting and on the honor of the applicant. It was held in that case that those facts constituted a conspiracy to defraud the United States, prohibited by the Revised Statutes, Section 5440, and this case has been much relied upon by the counsel for the Government in argument. It will be noted, however, upon a reading of the opinion, that Judge Aldrich expressly rests the decision upon the proposition that the defendants combined to cheat or deceive the agents of the Government in respect to a service which it was the duty of the government to perform and which it had the right to perform according to law. He also adds " The " regulations which were violated and subverted, " were requirements founded upon a law of Con- " gress which authorized the Civil Service Com- " missioners, under rules made by the President, " to prescribe regulations for the admission of per- " sons into the civil service of the United States. " The regulations and the requirements therefore " having reference in this particular case to the " mail service, were founded upon law and were " such as the Government had the right to enforce

"in connection with that department of the Gov-
"ernment. It is not our province to question the
"wisdom of the civil service law. Courts are bound
"to accept legislation, regularly enacted in the
"course of governmental development and author-
"ized executive action thereunder, as based upon
"grounds of sound and wholesome public policy.

See Opinion, page 11.

In the case at bar, the alleged duty of issuing the cotton crop reports in a particular manner or of keeping them secret is not imposed by any law of Congress, and the regulations which it is claimed were violated by the defendants were not regulations founded upon a law of Congress. Granting that the use of the word "defraud" is not limited in its application to the taking away from the Government of a thing of specific value, it must still remain that if there is no particular law of Congress or regulation of a department founded upon a law of Congress, defining the right of the Government with reference to the subject matter, that the Government cannot be defrauded by facts such as are here shown. Were it otherwise, there would be read into the statutes a multitude of constructive crimes, not defined by law, and it would be a crime to violate any rule or regulation of the head of any department of the Government, whether such rule or regulation was authorized by Congress or not. While the use and application of the word "defraud" has been very much extended by recent decisions, it will still be found upon a careful examination of the authorities to refer to the deprivation of a right which is given, fixed enumerated or authorized by some statute of the United States.

In Curley's Case, supra, there was a petition to this Court for a certiorari, and briefs were submitted thereon. (Curley v. United States, 195 U. S. 628). This Court denied the petition for a certiorari without expressing any opinion upon the subject, for which reason, Judge Hough, in the Southern District of New York, in deciding the case of United States v. Morse, 161 Fed. Rep., 429, wrote, "The question whether there could be a "conspiracy to defraud by merely deceiving a gov- "ernmental officer, when neither government or "officer was to be deprived thereby of money or its "worth, was presented to the Supreme Court so "fully and forcibly, yet so simply and directly, "that the refusal of the writ is certainly an au- "thority demonstrating the willingness of the high- "est tribunal to let the law alone.

Examination of the Morse case supra shows that every act of Morse constituted a direct violation of a federal statute, and it was there held, in substance, that the giving out of false information regarding the financial condition of the Bank of North America, which false information was given in violation of the statutes of the United States concerning the management and regulation of national banks appeared to defraud the United States, in that it deprived the Government of its right to have the banking laws administered in accordance with both the letter and the spirit of the Federal statutes.

In the Morse case, therefore, while it was held that it was not necessary to deprive the Government of money in order to defraud it, still the decision rests upon the fact that the government was deprived of a right defined and made penal by statute, which distinction will be found to run through all the cases.

In Hyde v. Shine, 199 U. S., 62, the conspiracy charged under Section 5440 was to defraud the United States out of the possession and use of and the title to divers large tracts of public lands of the United States. Certain corrupt and fraudulent practices were alleged in the indictment, but the gist of that case, as disclosed by the opinion is that the acts of the conspirators would operate to defraud the Government of a right or function imposed by a specific law of Congress. Mr. Justice Brown writing, said, "The States have a right to "punish a violation of a statute enacted as part of "its public policy, notwithstanding they may have "suffered no pecuniary damage therefrom. (page "81).

In the Keitel Case, 211 U. S., 370, this Court recently construed Section 5440 and its general application. The conspiracy charged was to illegaly obtain the title to certain coal lands belonging to the United States, and this Court held at page 393,

> "The proposition urged in argument that "a charge of the commission of crime cannot "constitutionally be predicated upon the aver- "ment of a conspiracy to defraud under the "second clause, unless the acts charged were "made antecedently criminal, is without "merit and is foreclosed by Hyde v. Shine, "199 U. S., 62, wherein it was expressly held "that a prosecution would lie upon the "charge of a conspiracy to obtain by fraudu- "lent practices public lands of the United "States. And indeed the ruling in that case "was but the reiteration of the prior rulings "in United States v. Hirsch, 100 U. S., 33, "and Dealy v. U. S., 152 U. S., 539."

It will be seen that in the Keitel case, supra, this Court was dealing with a conspiracy which had for its object an attempt to deprive the United

States of its title to lands—manifestly, the deprivation of a substantial right of property. While the opinion holds, as quoted above, that the alleged fraudulent acts need not have been made antecedently criminal, still we submit that the acts complained of must violate some provision of a statute or of a rule or regulation founded upon a statute which defined the right, or must be contrary to the provisions of a statute imposing upon a department of the Government a specific official function, concerning which it is claimed the Government has been defrauded.

We have heretofore shown that there was no official function with respect to the reports of the cotton crop imposed upon the Secretary of Agriculture; that Holmes was not charged with any duty with respect thereto, and that no rules or regulations of the Secretary of Agriculture based upon a statute of Congress were violated.

It is charged in these indictments that the Government was defrauded of its "governmental function" in two ways.

First, by the act of Holmes in giving out advance information concerning the report of the condition of the cotton crop;

Second, by the act of Holmes in making reports inaccurate and untrue.

It is claimed that the Government had a right to withhold its report upon the cotton crop until a certain date, and yet there is no statute granting such privilege, defining such right, or imposing such official function, right or duty upon the Secretary of Agriculture, or anyone connected with the department.

It is charged that Holmes did certain acts in

violation of his lawful duty, and yet no lawful duty was imposed upon Holmes, nor did he, at any time, act in an "official function" of the Secretary. It is again averred that Holmes was to make the reports untrue and inaccurate, and yet no duty, whatever, was imposed upon Holmes with relation to these reports. He is not an officer enumerated by law, as we have shown, nor was he an officer upon whom the statutes imposed any duty or obligation.

How then was the Government defrauded in this case? Holmes was not an officer of the United States. There was no lawful duty imposed upon him. He was a mere clerk in the department, and, giving the indictments their full force, he committed highly reprehensible acts, but was the government thereby defrauded of anything? In the cases relating to violations of the Civil Service Law, acts were performed directly contravening the spirit and letter of the statutes. In the Morse, and kindred cases, where the word "defraud" was made applicable, a definite official function was imposed by law. The official function of supervising and examining the national banks is placed by Congress upon the Secretary of the Treasury. Any act calculated to deprive the Secretary of his right to administer that law in accordance with the statutes operates, under Section 5440, to defraud the United States, but there is no official function with reference to the cotton crop report placed upon the Secretary of Agriculture. The custom of issuing reports at certain stated times and of keeping their contents secret is a custom which has apparently grown up in the department without any rule or statute governing the same; and, it may well be doubted, as we have heretofore stated, whether the keeping of such reports *secret* is a custom which operates to the benefit of the general public.

If the United States is to be defrauded or deprived of a right or function, the right or function must be one imposed by law. If the acts set forth in these indictments constitute a crime, then we submit to the Court that every act, however trivial, performed by an employee of any of the departments in violation of a rule of the head of the department, whether such rule is founded upon a law of Congress or not, would be criminal and the parties subject to indictment.

Again, if the violations of unknown and uncertain rights, rules or regulations, not defined by law, are to be made the basis of criminal charges, how can anyone in the employ of the Government know when a crime is being committed, or what acts will constitute a crime?

It will be answered to this, undoubtedly that the acts of Holmes, and of the other parties, if proven, involved moral turpitude, but if we concede that proposition for the sake of the argument, can it be held that every immoral or disloyal act is to be made a crime?

If the secretary or stenographer of a Justice of this Honorable Court should disclose an opinion of the Justice writing, in advance of the time when it was intended to be handed down, would this act be one which it could be held constituted a crime, there being no statute upon the subject? Assuming, for the sake of argument, that the judges of this Court had promulgated a definite rule that no stenographer or secretary should give out any opinion in advance, and should append to such a ruling a further statement that its violation would be penal, would it thus be penal in the absence of a law of Congress making it so? Are not the secretaries and stenographers of the justice of this Court as much officers as Holmes? If the argument is

good that Holmes was exercising an official function of the Secretary of Agriculture then is it not quite as true that any secretary or stenographer of this Court is also exercising an official function of the justice by whom he is employed? The custom has grown up in this and in other courts of withholding an opinion from publication until it is intended to hand it down. The publication of the opinions of this Court is attended with marked financial results, depending upon the effect of the decision upon the subject matter. Should there be a conspiracy of three lawyers to procure from one of the secretaries or stenographers of this Court an opinion in advance of its publication, would it be an indictable conspiracy under Section 5440 to "defraud the United States in any manner or for any purpose?" Like the acts charged against Holmes, such act on the part of a secretary or stenographer of this Court would involve great moral turpitude and would be highly reprehensible; but would an indictment lie for it or for a conspiracy to induce it in the absence of a statute upon the subject?

Assuming again, that a secretary or stenographer of this Honorable Court were to intentionally change some of the words in an opinion, so that the meaning thereof would be contrary to that intended by the Court, would this be an indictable offense in the absence of a statute making it so, and if not an indictable offense, would it be a violation of Section 5440, or an act to defraud the United States to conspire to induce such act?

In other words, if it is to be held to be a crime to deprive the United States of a right or an official function, must not the right be one defined by law and the official function one imposed by law?

That none of the acts complained of in these in-

dictments were penal when committed as claimed is made doubly clear by the fact that Congress has but recently made them so.

The new Federal Penal Code, adopted by Congress during the closing hours of the last session contains provisions which specifically make it a crime for any employee of the government to give out Departmental information or information concerning the probable contents of reports upon the condition of the crops. It is also made a crime by the same law for an officer or employee of the United States to issue false statistics.

See Section 123 and 124 of "An Act to codify, revise and amend the penal laws of the United States" approved March 4, 1909, and in force on January first, 1910, reads as follows:

> "Sec. 123. Whoever, being an officer or "employee of the United States or a person "acting for or on behalf of the United States "in any capacity under or by virtue of the "authority of any department or office "thereof, and while holding such office, em- "ployment or position shall, by virtue of the "office, employment, or position held by him, "become possessed of any information which "might exert an influence upon or affect the "market value of any product of the soil "grown within the United States, which in- "formation is by law or by the rules of the "department or office required to be withheld "from publication until a fixed time, and "shall wilfully impart, directly or indirectly, "such information, or any part thereof, to "any person not entitled under the law or "the rules of the department or office to re- "ceive the same; or shall, before such infor- "mation is made public through regular offi- "cial channels, directly or indirectly specu- "late in any such product respecting which "he has thus become possessed of such infor- "mation, by buying or selling the same in

" any quantity, shall be fined not more than
" ten thousand dollars, or imprisoned not
" more than ten years, or both: *Provided*,
" That no person shall be deemed guilty of a
" violation of any such rule, unless prior to
" such alleged violation he shall have had
" actual knowledge thereof.

" Sec. 124. Whoever, being an officer or
" employee of the United States and whose
" duties require the compilation or report of
" statistics or information relative to the pro-
" ducts of the soil, shall knowingly compile
" for issuance, or issue, any false statistics
" or information as a report of the United
" States, shall be fined not more than five
" thousand dollars, or imprisoned not more
" than five years, or both."

By the passage of this act Congress has established beyond all question that the acts complained of in the case at bar were not covered by any statute of the United States at the time of their commission.

This Court has held in Oceanic Steam Navigation Co. vs. Stranahan, 214 U. S., 330, that

" In construing a Congressional Statute,
" this Court may consider the report of the
" Committee as a guide to its true intepreta-
" tion to dispel ambiguity if any exists."

If this Court will examine the Congressional Record (Volume 42, Number 26, of Tuesday, January 21, 1909), and other copies of the Congressional Record at the time when Congress was considering the proposed revision of the Penal Laws, it will be found that in the discussion then held, this case at bar was considered, and it was then conceded by the members of Congress that there was no law governing this case for which reason, as then stated, the penal law was amended by adding thereto the sections to which we have referred.

Again, in the Keitel case, supra, this Court held in considering the word "defraud", at page 394:

> "Nor do we deem it necessary to do more
> "than briefly refer to the elaborate state-
> "ments at bar concerning constructive crimes
> "and the fear which also found expression in
> "the opinion below, that if the words to de-
> "fraud in any manner or for any purpose re-
> "ceive a broad significance charges of crime
> "may hereafter be predicated upon acts not
> "prohibited and innocuous in and of them-
> "selves, and which, when they were commit-
> "ted, might have been deemed by no one to
> "afford the basis of a criminal prosecution.
> "It will be time enough to consider such fore-
> "bodings when a case arises indicating that
> "the dread is real and not imaginary. That
> "they are mere phantoms when applied to
> "the case here presented results from the ob-
> "vious consideration that the conspiracy
> "charged had for its purpose the doing of
> "acts which were in clear violation of the
> "direct prohibition of the coal land laws, a
> "prohibition whose meaning and effect had
> "been unmistakably announced and applied
> "by a decision of this court rendered many
> "years before the formation of the conspir-
> "acy here charged. The cogency of these
> "considerations becomes more pointedly
> "manifest when it is borne in mind that the
> "purpose of necessary effect of the conspir-
> "acy complained of was to obtain the lands
> "of the United States by the suppression of
> "facts which, had they been disclosed, would
> "have rendered the acquisition impossible."

The above quotation shows that this Court based its decision in the Keitel case upon the proposition that the effect of the conspiracy was to obtain lands of the United States and that "the conspiracy "charged had for its purpose *the doing of acts* "*which were in clear violation of the direct pro-* "*hibition of the coal land laws.*

In United States v. Biggs, 211 U. S., 514, there was a conspiracy by which it was contemplated that the United States should be defrauded by the unlawful obtaining by purchase under the Timber and Stone Act, of public lands in excess of the quantity authorized by law to be acquired. Here, again, this Court was dealing with a substantive fraud made so by statute. In affirming the decision of the lower Court (157 Fed. Rep., 264), wherein it was held that the acts charged in the indictment did not show that the United States Government had been defrauded in any manner or for any purpose, this Court held:

> "It is insisted by the government that, "however conclusive may be this ruling as "to the power of the applicant to sell after "application and to perfect his entry for the "purpose of enabling him to perform such "contract, such ruling does not conclude the "contention that a conspiracy formed to in"duce an entryman who has made his appli"cation to purchase subsequently to agree to "convey his interest in the land would be a "violation of the statute. But we are con"strained to say that this is a mere distinc"tion without a difference. The effect of the "ruling in the Williamson case was to hold "that the prohibition of the statute only ap"plied to the period of original application, "and ceased to restrain the power of the en"tryman to sell to another and perfect his "entry for the purpose of transferring the "title after patent. This being concluded by "the decision in the Williamson case, the dis"tinction now sought to be made comes to "this, that it is unlawful under the statute "to conspire to have that done which the stat"ute did not prohibit, and, on the contrary, "by implication recognized could be lawfully "done without prejudice or injury to the "United States in any manner whatever. "This also serves to demonstrate that no er

> " ror was committed by the Court below in
> " holding that under Sec. 5440, Rev. Stat.,
> " the acts charged in the indictment could not
> " possibly have constituted a defrauding of
> " the United States in any manner or for any
> " purpose within the intention of that sec-
> " tion."

In the Crawford case, 212 U. S., 183, it was held to be a crime for an official of the United States to secretly receive any portion of an amount paid for supplies furnished upon his requisition. Again the Court had before it a charge involving a person who was concededly a public official, to-wit, General Superintendent of the Free Delivery of the Post Office Department of the United States, and the unlawful scheme or conspiracy contemplated that the Government might pay a higher price for certain satchels than it otherwise would have paid. Mr. Justice Peckham wrote,"

> " Such a corrupt agreement if carried out
> " would naturally if not necessarily result in
> " defrauding the United States, because it
> " paid much more for satchels than was nec-
> " essary or for more satchels or possibly in-
> " ferior ones than it otherwise would but for
> " the corrupt agreement set forth. The in-
> " dictment was sufficient. United States v.
> " Hirsch, 100 U. S., 33; Hyde v. Shine, 199 U.
> " S., 62 (82); United States v. Keitel, 211 U.
> " S., 370. (See Opinion, page 192).

It was held in this case that certain definite duties were by statute placed upon the superintendent which he violated, also that he was an officer of the United States, and that the object of the conspiracy caused the United States to pay more for certain articles than it otherwise would have paid. All of the facts of the Crawford case expressly differentiate it from the case at bar.

A review of the cases under the second subdivis-

ion of Section 5440, defining the word "defraud," is important as illustrating that no case has yet applied the statute unless the acts complained of constituted the deprivation of a right or duty imposed upon a department of the government by statute (as in the Curley case), or that the acts operated to deprive the Government of property or the right of property.

United States v. Cruickshank, 92 U. S., 542.
United States v. Simmons, 96 U. S., 360.
United States v. Hirsch, 100 U. S., 35.
Dealy v. United States, 152 U. S., 539.
France v. United States, 164 U. S., 676.
In re Wollf, 26 Fed. Rep., 611.
United States v. Reichert, 32 Fed Rep., 142.
United States v. Millner, 36 Fed. Rep., 891.
United States v. Purchel, 116 Fed. Rep., 142.
United States v. Thomas, 145 Fed. Rep., 79.
United States v. Taffe, 186 Fed. Rep., 113.

In none of the cases do we find that reprehensible or immoral acts not made penal by statute or not violative of a rule or regulation of a department in effect by authority of Congress have been held to be crimes or within the purview of Section 5440 condemned as conspiracies to defraud the United States. To make penal the acts complained of in these indictments, however reprehensible they may have been, is to read into the statutes unlimited constructive offenses which are not defined by law.

It has always been held that the penal laws must be strictly construed and that if there is any doubt concerning the application of a criminal statute, it must be resolved in favor of the defendant.

Williamson vs. U. S., 207 U. S., 425.
Hamilton vs. U. S., 26 App. D. C., 382.

Can it be said that there is no doubt in this case? Can counsel for the Government point to any statute which has been violated? Can they point to any statute imposing an official function upon the Secretary of Agriculture concerning the cotton crop reports? Can they point to any statute making Holmes an officer or charging him with a duty? What have we here more than a charge of immoral conduct—grossly immoral we may admit, if true—and yet, can it be said that the United States was defrauded within the meaning of the criminal law? To answer these questions in the affirmative is to go further than any case has yet gone, or further than this Court has gone in any of its decisions.

We submit that the indictments relating to a conspiracy to defraud the United States, and those counts of the other indictments which relate to the same subject were insufficient as the basis of a criminal charge, and that, therefore, there was no jurisdiction conferred upon the Commissioner to commit the defendants for removal to the District of Columbia for trial. This defect in the indictments would have been obvious to the Commissioner upon a mere reading of the same, and the prayer of the defendant to be discharged upon habeas corpus should have been granted.

V.

The indictments did not confer jurisdiction upon the Commissioner to commit the defendant for removal to the District of Columbia, and there was an absence of probable cause for the further reason that the indictments do not aver an illegal conspiracy to defraud the United States in the matter of making the reports untrue and inaccurate.

Counsel for the Government, while not entirely abandoning the contention that the act of Holmes in giving out advance information operated to defraud the United States, seemed to rely more strongly during the argument before Judge Ward upon those portions of the indictments which it is claimed charge a conspiracy to cause the reports to be made untrue and inaccurate. Judge Ward in commenting upon this phase of the case wrote as follows:

> "On the other hand, as the Government evi-
> "dently intended to supply the public with
> "correct information, its whole purpose
> "would not only be prevented, but actually
> "reversed, if the department issued incorrect
> "reports. A conspiracy to cause incorrect
> "monthly reports to be published would de-
> "fraud the United States, because it would
> "change its department from an agency to
> "enlighten the public into an agency to mis-
> "lead it. It would be as if wreckers, in com-
> "bination with persons connected with the
> "location of channel buoys or with light-
> "houses, were to combine to move the buoys or
> "extinguish the lights. Therefore the third and
> "seventh counts of indictment No. 26088,
> "which charge the petitioner with being a
> "party to such a conspiracy, in my opinion
> "charge him with conspiracy to defraud the
> "United States, which is made a crime by sec-
> "tion 5440, Rev. St. U. S.

Haas v. Henkel, 166 Fed. Rep., at page 626.

Examination of the indictments discloses that their averments do not support the comment made.

The third and seventh counts of indictment No. 26088 held good by Judge Ward, refer to the second count of that indictment for a discription of the method and manner of preparing the cotton crop reports. It it there shown that the reports were prepared.

> " From certain information collected by " the said bureau from divers sources ap- " proved by the said bureau."

Which were stated to be "certain correspondents" residing in different parts of the United States; "certain employees of the said bureau known as statistical agents," and "certain other expert employees of the said bureau whose duty it was to travel throughout the United States and ascertain the condition of the said crops." (Fols. 294, 295).

The statistician, therefore, in preparing the report used his judgment based upon the information derived from these various sources. This judment of the statistician, or of the officers of the Bureau of Statistics, was not intended to be "true and accurate" and, necessarily, could not be so. The indictments admit this in alleging "that said crop reports * * * * *were* "*to* "*be as nearly fair, impartial, correct and accurate* "*as it was possible for such reports to be.*" (Fol. 295).

From the foregoing we ascertain that the statistician collated together the statistics and information given to him by "correspondents," "persons

having special knowledge," and "expert employees," and made his conjecture as to the extent and condition of the cotton crop from these sources of information. The information may have been correct or it may not have been so. The "expert employees" and "statistical agents" who gave their opinions, may have had good opinions or they may have had poor ones. The result of the work, after the statistician had made out the report and used all the sources of information at his command, would be at best but a guess, and, in actual practice, has not been shown to be correct and accurate. In fact, it is common knowledge that persons outside of the Department of Agriculture, using their own sources of information, have furnished more nearly accurate reports than the Department itself, and that estimates and opinions given out in the public press have come nearer to the truth than the reports issued from the Department of Agriculture. We, therefore, start with the promise and the admission in the indictment that the reports could not be true and accurate but that it was hoped to make them "as nearly fair, impartial, correct and accurate" "as it was possible for such reports to be." Is this a sufficient premise upon which to rest a charge of criminality and was the Government defrauded if Holmes used his own judgment as to the probable condition of the cotton crop instead of accepting the judgment of the "correspondents", "statistical agents", and "expert employees"?

The indictments state that Holmes was a person having special and particular knowledge of the subject of the cotton report being so much of an expert that he was denominated "associate statistician in the Bureau of Statistics". Is there any

rule or regulation authorized by Congress or statute stating in what method or manner the report upon the cotton crop is to be prepared and authorizing the report to be made upon information given by "correspondents", "statistical agents", and "expert employes"? Nowhere in any statute is there a provision as to how the crop report shall be prepared, and it was conclusively shown upon the Holmes trial, as the records of that trial, which can be produced, will demonstrate, that in the preparation of these reports the individual judgment of the officers of the Bureau of Statistics entered into the matter. They often disregarded information given to them by "special correspondents", and "statistical agents" as not reliable and accepted other information as being in their judgment more reliable. The result of the report upon the condition of the cotton crop was a surprise; there was nothing accurate about it; there was nothing positive about it; some "correspondents" sent in their reports and others did not; some "statistical agents" differed very largely in their opinions from other "statistical agents." The Bureau of Statistics simply took all of these sources of information, good, bad and indifferent, and supplementing them with the individual judgment of persons in the department, endeavored to arrive at what they believed would be the probable result. In this work, it is averred in the indictments Holmes assisted; it being stated as matter of law that he was "charged with the duty of "aiding and assisting the said statistician in the "preparation of said crop reports, including said "cotton crop report," but, as we have heretofore shown, this allegation that he was charged with a duty, etc., is a mere conclusion of law, because

nowhere in any statute, or in any regulation or rule of a department based upon a statute, is Holmes charged with any duty whatever. However, if, for the sake of the argument, we accept the conclusions of the indictment, Holmes was to assist in the preparation of the report and it is charged that it was his duty whenever he so assisted "to prepare and assist in preparing a true "and accurate report from the information as to "said crops obtained as aforesaid" (fols. 298, 299). How could Holmes be charged with the duty of preparing "a true and accurate report" when the indictment expressly negatives this result by stating that the reports were to be as "nearly accurate" "as it was possible for such reports to be"? Manifestly if the information given by the "correspondents," the "statistical agents," and the "expert employees" was inaccurate the report could not be true and accurate. So that the indictments, when they allege that Holmes was "charged with the duty" of making the reports "true and accurate" aver that he was charged with a duty which, manifestly, it was not posssible for him to perform Under no circumstances or conditions was it possible for Holmes or any other human being to make the reports "true and accurate." With these premises in mind, we consider the averment of the third count of indictment No. 26088 which is that "in violation of the duty of "him, the said Edwin S. Holmes, Junior, to pre-"pare and assist in preparing the said cotton "crop reports truly and accurately from the "information as to said crops obtained as afore-"said, and without regard to the influence of such "reports upon the market price of cotton, the "said Edwin S. Holmes, Junior, in assisting and

"preparing the said cotton crop report to be "issued in the month of June then next follow- "ing was to cause and procure the said report to "be untrue and inaccurate by causing said report "to state that there had been planted in cotton "throughout the United States a greater number "of acres of land and that the condition of the "cotton crop was better than would be shown by "said report if it had been based upon the infor- "mation as to said cotton crop obtained as afore- "said, and had been truly and accurately pre- "pared." (Fols. 305, 306).

Holmes, therefore, is charged with violating a duty which could not by any possibility have been imposed upon him and which was not imposed upon him, and that is — to prepare "true and accurate" reports. The conspiracy charged is that Holmes was to violate his duty "in preparing "said cotton crop reports duly and accurately "from the information," etc. But there is no allegation that Holmes or any other employee in the Department was bound to follow the information given by the "correspondents," statistical agents" and "expert employees," and as a matter of fact they did not do so and never did so.

If the Court, as stated by Judge Hough in United States v. Haas, 163 Fed. Rep., 909, can take judicial notice of rules or regulations of the Agricultural Department which have not been published, then it can also take judicial notice of the method and manner in which these reports upon the cotton crop were prepared; and, if there is any doubt upon that subject, there can be produced to this Court the minutes of the trial in the Holmes case wherein the Secretary of the Agricul-

ture and other officials of the Depart of Agtmenriculture were sworn as witnesses and stated in detail how this cotton crop report was prepared. We apprehend that the spirit of fairness which prevades the Department of Justice would not lead the counsel for the Government to object to the production of these minutes, and they will show conclucisely that the personal judgment of the parties compiling the reports or using the information entered into the final result. There was therefore no duty imposed upon Holmes or upon any other official of the Department of Agriculture to rely exclusively upon the information obtained from "special correspondents," "expert employes" and "statistical agents." Nor was there any duty imposed upon them to make the reports absolutely true and accurate because manifestly that could not be done. The officers of the Bureau of Statistics often disregarded information which they did not wish to use, and often times made special investigations, all of which entered into the consideration of the subject.

In the Holmes case Victor H. Olmsted, the Chief of the Bureau of Statistics of the Department of Agriculture, was called as a witness on behalf of the Government and testified as follows:

> "Q. Now, will you take and explain those
> "papers to the jury?
> "A. Yes. You will remember that there
> "were two inquiries in these schedules—
> "acreage and condition—that were tabulated
> "in separate columns. There were seven
> "classes, five classes that I handled, and two
> "classes that went directly to the statistician,
> "the five I handled being the individual far-
> "mers, the townships, the county correspon-
> "dents, the special cotton correspondents,
> "and the ginners. The reports of the State
> "statistical agents and of the special field

" agents went direct to the statistician. The
" results of the tabulations that were made
" under my direction were handed to the sta-
" tistician by me. Having received the
" results of all those different reports, the
" statistician would place them for each state
" in parallel columns here. Here are the
" figures for each state as reported by the
" state statistical agents; you will see they
" are for each state separately, the figures
" reported by the state agents. Here are the
" figures for the county correspondents in the
" next column. In the next column are the
" township correspondents. In the next col-
" umn are the ginners. In the next column
" are the special cotton correspondents. In
" the next the individual farm reports. The
" next column is headed " White," because
" Mr White was the special field agent; and
" the special field agent's figures for each
" state are in that column. These are all the
" figures there are. Mr. Hyde having those
" figures before him, tabulated in that way
" from all those different sources of informa-
" tion, took another sheet.

" Mr. Worthington: Were you present
" when this would be done, Mr. Olmstead?
" Do you know how it was done?

" A. I have done it myself, sir. I have
" done it myself for 1901, when I was Acting
" Statistician in the absence of Mr. Hyde;
" and I have done it since, and I know posi-
" tively that this was the method that was
" followed from actual experience and obser-
" vation, and my intimate knowledge of the
" conduct of the affairs of the office.

" Mr. Worthington: You were not pres-
" ent when it was done in 1904?

" The Witness: No, sir; I was not, not
" once.

" Mr. Worthington: You do not know,
" then, how it was done?

" The Witness: Only from the internal
" evidence, which is exactly similar to that
" of the computations made before and since.

" Mr. Worthington: I will not object to it
" with that understanding.

" The Witness: He took another sheet, " and, looking at those figures right across " there for Virginia, he made up his mind, " taking into consideration the credence to be " placed in each class of correspondents, and " his knowledge of how much reliability they " were entitled to be fixed on a figure for " Virginia, and said it was 82. You see how " they run; some of them said 80, some said " 82, some said 84, one said 98 which was so on " far out of line that he ignored it; and he " said the figure for Virginia was 82; and so " down for each state; he fixed on a figure " himself. I know he did it because I know " his handwriting. This is his penmanship. " He would fix on a figure for each State and " put it out there.

" By Mr. Baker:

" Q. In other words, he would not add " these per cents together and divide them by " the number of figures that he had here?

" A. Oh, no; you could not do that. You " can see readily that that was not done. The " most casual inspection shows that that was " not done. He would, in considering all " the data before him, using his own personal " knowledge, letting the personal equation " enter into this thing, arrive at a figure that " he believed represented the true condition " of affairs for each particular State, and he " put that down in that column there opposite " each State. Having done that, having " arrived at his figures, he would multiply the " figure for each State by the weight of that " State Those weights as I explained to you " are the acreage as determined by the United " States Census Bureau; and here you have " the extension out here. Multiplying this " by this (indicating) would give this (indi " cating). Then he would add these together, " get that total there, and add these together " and get this total here; and in that way he " got a figure for the United States of 83. " That is the condition of the crop on that " day. This was the method he pursued.

"Now, as to the acreage, exactly the same "method was pursued. He had the figures "reported by each different class of corres- "pondents for each State regarding the acre- "age this year as compared with the preced- "ing year. There they are, in separate "columns. Having got that all down on that "sheet of paper, he took another sheet like "this and matched it up, and then he put in "what he thought was the proper figure for "each State, using all these figures to "arrive at his figure. The same method was "adopted in this as in the other one, exactly "and it is the same general method that was "adopted right through from the start. And "method was adopted not only as to cotton "but as to all crops. Each crop was handled "separately in the same way.

"Q. And then you arrived at the percent- "age of the whole United States?

"A. By multiplying the weights by the "figure for each State, and dividing the sum "of the results by the sum of the weights.

"Q. Just the same way as you got the "States?

"A. Exactly so. The same principle is "carried through the whole thing.

The foregoing testimony of Mr. Olmsted shows clearly that the statistician "*used his own personal knowledge*, "letting the personal equation enter into this thing", and arriving at a figure "that he *believed represented* "the true condition of affairs for each particular State."

Holmes, therefore, had a right to use his own personal knowledge and information, and had a right to press it upon the statistician for his consideration. If the Government is to rest a charge of criminality upon the violation of a custom or practice in the Department of Agriculture this Court has a right to know just what the custom and practice were with reference to the compilation of the reports.

At a first reading of the indictments one is apt to conclude that Holmes was to give out false statistics, and this is the view which evidently impressed itself upon Judge Ward and upon Judge Hough when he overruled the demurrers in United States v. Haas, 163 Fed. Rep. 908, but the indictments clearly show that this is not the charge. It is charged that Holmes was to prepare the reports "truly and accurately" from the information stated. Whereas this is negatived by the broad allegation in the indictments that the report was to be as accurate as it was possible for the report to be.

It is not charged that Holmes was in any way to falsify the figures given by the "special correspondents", the "expert employees", and the "statistical agents". It is not charged that the result of the report as finally made out was to be, *in fact*, an untrue and inaccurate report, or in other words, that the report as given out did not agree with the actual facts; but the charge reduced to its simple conclusion is that Holmes was not to follow the information given in all respects, but was to use his own judgment as to the condition of the cotton crop. Again, *it is not charged that this statement of Holmes as to the number of acres planted in cotton throughout the United States was not absolutely correct and in accordance with the actual facts*. The charge is only that the information given was not to be followed in all respects, and then it is admitted that the information in any event was not true and accurate, because the reports were to be "as nearly fair, impartial, correct and accurate as it was possible for such reports to be." We look in vain in the indictments for a statement that Holmes falsified the figures or that the final result

of the report as published was not true and in strict accordance with the honest facts. We have shown that Holmes was not bound to follow the information derived from the "special correspondents," "statistical agents" and "expert employees," we have shown that it was not the custom to do so, and that individual judgment entered into the equation. There is no charge that the report as published was in fact untrue as to the number of acres of land actually planted or that the parties conspired to make the report untrue in fact. Is it not possible that the judgment of Holmes was better than the judgment of the "special correspondents," "statistical agents" and "expert employees?" If the concensus of the information derived from the sources named disclosed a certain number of acres in the United States as having been planted with cotton, and Holmes as associate statistician using his own judgment added one acre more to the figures, then the indictments, if the Government's contention is to be sustained, would apply to that act and would make it criminal.

Here is a case where there was no absolue way of determining the actual condition of the cotton crop, and no way of stating positively and accurately the number of acres actually planted. Here was a Bureau of Statistics engaged in collecting such information as it could from all parts of the country and, in endeavoring to arrive at a uniform result, adopting some sources of information and excluding others; adding the personal judgment of the officers of the Bureau and endeavoring thus to make a conjecture which would be "as nearly accurate as possible." Under these conditions was the associate statistician charged with the duty of making the reports absolutely true and accurate?

It is so stated in these indictments—"in violation "of the duty of him, the said Edwin S. Holmes, "Junior, to prepare and assist in preparing the "said cotton crop reports *truly and accurately* "from the information as to said crops obtained as "aforesaid." It is expressly admitted in the indictments that he could not have prepared true and accurate reports from such sources of information. Even if he did disregard some of the sources of information and adopted others, or adopt his own judgment, as Mr. Olmsted testified, was done, so that the result of the conjecture was to make the number of acres of land planted in cotton greater than it would have been had the information given been solely relied upon; did that constitute a criminal act upon the part of Holmes unless the result as published was in fact and in truth untrue? Granting the indictments their full force, was it a crime for the defendants to say to Holmes that they believed the report would or should show that more acres were planted in cotton than the agents, employees and correspondents of the Department would report? Must not this portion of the indictments, if good at all, rest upon an allegation that the report as actually given out was *in fact* false and untrue? The whole method of computation was at best a mere guess or surmise; there was nothing absolute about it; it was not true and accurate. Was Holmes charged with any greater duty than the other persons in the Department? Was it his duty to make the reports absolutely "true and accurate" the only claim is that they were to be as nearly accurate as possible? Who was defrauded by the act of Holmes? How could the United States be defrauded? *If the report as issued was actually correct then the United States*

was not defrauded, and there is no averment in the indictments that the report as issued was not true and in strict accordance with the facts.

Suppose that Holmes did disregard the information given by the "special correspondents," "statistical agents," and "expert employes;" suppose for the sake of the argument that he used his own judgment entirely; suppose that the concensus of opinion as to the number of acres planted in the United States was a certain figure, which figure Holmes did not believe to be true and would not adopt; suppose again that he used his own judgment entirely and stated the number of acres planted in cotton throughout the United States to be what he alone believed; and then suppose that his belief was correct and true and that there were actually planted in the United States the number of acres of cotton as given in his report—how was the United States defrauded and how did Holmes commit an illegal act and how did the defendants here commit an illegal act in conspiring to produce that result? *There is no averment in the indictment that the report as to the number of acres of land planted in cotton throughout the United States, as given out, was not absolutely correct, true and accurate.*

No matter what the pathway may have been to the final result,—no matter how many considerations, venal or otherwise, entered into the mind of Holmes or the defendants—no matter to what extent he disregarded the reports of the "special correspondents," "statistical agents," and "expert employees," if the final result as given out by him was true and accurate the United States could not have been defrauded of anything. Instead of being defrauded, the

Government would have been actually assisted to the performance of a more accurate service.

The Court will note, and we emphasize it so that the point will surely be borne in mind, that the charge is not that Holmes gave out a report, which was in truth and in fact untrue and inaccurate, but only that the report as given out by him showed the number of acres planted to be greater than the concensus of the sources of information.

Judge Ward said, *supra*,

> "Conspiracy to cause incorrect monthly re-
> "ports to be published would defraud the
> "United States, because it would change its
> "department from an agency to enlighten the
> "public into an agency to mislead it. It
> "would be as if wreckers, in combination with
> "persons connected with the location of chan-
> "nel buoys or with lighthouses, were to com-
> "bine to move the buoys or extinguish the
> "lights.

In this language we submit, with due respect, that the learned Justice entirely failed to comprehend the scope of the indictments. The conspiracy charged is not that incorrect monthly reports would be published, nor is there any averment that incorrect monthly reports were in fact published. A conspiracy "to move the buoys and "extinguish the lights" is not an apt comparison. There the conspiracy would relate to a definite change contrary to law, but in the case at bar, where it is conceded by the indictments that the report upon the cotton crop could not be wholly accurate, and where the entire aim of the Bureau of Statistics was to make it as accurate as possible, the Government could not be defrauded unless in fact and in truth an incorrect report were given out. It is not charged that the parties

conspired to cause Holmes to make the report false in fact.

These ihdictments with reference to the charge that the conspiracy "was to cause "and procure the said report to be un- "true and inaccurate," show not only that the Government suffered no pecuniary loss, but also failed to show that it was deprived of any right or privilege. The right of the Government, through the Department of Agriculture, to issue an honest report upon the the condition of the cotton crop and upon the number of acres planted with cotton, was not in any way affected or taken away if the report as issued were in fact true.

We submit that the absence from these indictments of an averment to the effect that the report as given out was not in fact and in truth inaccurate, or that the parties conspired to make it false in fact are fatal defects and remove from consideration all charge of criminality or conspiracy to defraud the United States by this method.

In all of the cases wherein it has been held that a conspiracy to defraud was a crime, the Government has either suffered a pecuniary loss or there has been an actual deprivation of a right or privilege. The Governmental function of issuing an accurate report can not be violated or the government defrauded unless the report as issued is in fact false.

VI.

It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the Government unless such custom, practice or regulation has been authorized by statute and its violation made penal by some general or special law.

The averments of the indictments as to a custom, practice, or regulation in the Department of Agriculture prohibiting the giving out of information about the reports upon the cotton crop are substantially identical, but differ slightly in two of the indictments. These indictments are now referred to in their order.

FIRST WASHINGTON INDICTMENT.

"That under the *practice, custom and regulation* of the said department established and sanctioned by the said Secretary of Agriculture, no officer or employee thereof to whom such information might come by reason of his office or employment had been permitted to issue, publish or divulge to unauthorized persons, and all such officers and employees have been prohibited from issuing, publishing or divulging to unauthorized persons any such information so acquired as aforesaid, or any such cotton crop report, or any information indicating the probable contents or character of the same, in advance of its official issuance and publication, or without its first being submitted to and officially approved by the said Secretary." (fols. 287-288.

SECOND WASHINGTON INDICTMENT.

" That during the time and times aforesaid a "*custom and practice* prevailed in the said De- " partment of Agriculture, established and sanc- " tioned by the said Secretary under which the " giving out to the public of any information col- " lected by the said Bureau of Statistics, or its " said officers, or its said employees, to be used " in the preparation of or to be contained in any " of said crop reports, was prohibited, and the " keeping of such information secret was re- " quired, except such information as was con- " tained in said crop report when and after the " same had been officially issued and published."

These two allegations, quoted above, are repeated in the other indictments and may be taken as illustrative of all. It will be observed by the Court that the pleader was careful to avoid the use of the word " rule." It is averred that there was a " practice, custom and regulation " of the Department " sanctioned by the said Secretary of Agriculture," but nowhere is there to be found the statement that the Secretary of Agriculture had promulgated a rule relative to the matter, nor is there any statement that said rule had been published. Giving the indictments their full force, and these averments are resolved into the mere statement that there was a certain practice in the department which the Secretary of Agriculture had sanctioned. Upon the argument before Judge Holt upon the 1905 indictment, this is precisely what was then contended for by counsel who at that time represented the Government. Judge Holt, in his opinion, wrote as follows:

> "The counsel for the government concedes "that there is no statute of the United States "which makes such acts as are alleged in the "indictment an offense, *and that there are no "written rules or regulations which the De- "partment of Agriculture has adopted, pur- "suant to any statute or otherwise, prohibit- "ing such transactions.*"

And again,

> "A fair inference from the language of this "indictment is and the counsel for the govern- "ment admits, that there had been no formal "rule promulgated imposing a duty upon the "employees to keep the crop information sec- "ret before it was published. It may be as- "sumed that it was understood in the office "that it should be kept secret, and that it was "a dishonorable act on the part of Holmes to "publish it; but we are dealing with the "question of crime. Unfaithful, dishonorable "or treacherous conduct, however censurable "morally, is not a crime unless made so by "law."

> See United States vs. Haas, 167 Fed. Rep., 211.

Upon the argument before Judge Holt, counsel for the Government expressly admitted that there was no rule in the Dtpartment of Agriculture prohibiting the publication of the cotton crop reports or requiring that such reports should be kept secret, and counsel at that time rested the Government's case upon a custom in the department, or, in other words, what was described as "the common law of the department."

In the indictments in the case at bar, counsel for the Government have been careful not to plead a rule promulgated by the Secretary of Agriculture upon the subject of the cotton crop re-

port or any rule which has been made in accordance with a statute. It must be conceded upon this argument by counsel for the Government that, even if the Secretary of Agriculture had made a rule requiring information concerning the cotton crop or its statistics to be kept secret, a charge of crime could not be predicated upon the violation of the rule because there is no statute authorizing the Secretary to make a rule of this character nor any statute making its violation a criminal offense. It is well settled that there are no common law offenses against the United States.

In United States vs. Eaton, 144 U. S., 677, it is held:

> "Much more does this principle apply to a "case where it is sought substantially to pre- "scribe a criminal offense by the regulation of "a department. It is a principle of criminal "law that an offense which may be the subject "of criminal procedure is an act committed "or omitted in violation of a public law either "forbidding or granting it."

And again in the same case:

> "Regulations prescribed by the President "and by the heads of departments, under au- "thority granted by Congress, may be regula- "tions prescribed by law, so as lawfully to "support acts done under them and in accord- "ance with them, and may thus have, in a "proper sense, the force of law; but it does "not follow that a thing required by them is a "thing so required by law as to make the neg- "lect to do the thing a criminal offense in a "citizen, where a statute does not distinctly "make the neglect in question a criminal of- "fense.

While it is provided in the Revised Statutes, Section 161, that the head of a department may

prescribe regulations not inconsistent with law for the government of his department, it is likewise true that in order to constitute any act or set of acts, an offense, the act must be made criminal by statute.

In the late case of United States vs. Sandefuhr, 145 Fed. R., 49, it is held

> "While Congress may make the violation of "a regulation of a head of a department made "by its lawful authority, a penal offense, it "must be done by a specific act, as penal stat- "utes cannot be made to rest upon presump- "tion."

In Morrill v. Jones, 106 U. S., 466, at page 467, Mr. Chief Justice Waite writing the opinion of the Court, held that the Secretary of the Treasury could not, by his regulations, alter or amend a revenue law.

In United States v. Boyer, 85 Fed. Rep., 425, the Court held that rules and regulations made by the Secretary of Agriculture founded upon acts of Congress which were without constitutional warrant were void and that the crime of bribery could not be predicated upon a violation thereof.

Judge Rogers, in summarizing the case, wrote:

> "In the case at bar, had the inspector re- "ceived the bribe, it would have been no of- "fense against the laws of the United States, "for the reason that it was intended to induce "him not to do a thing which no valid law of "Congress imposed upon him to do."

In Wilkins vs. United States, 96 Fed. Rep., 837, it was held that:

> "Regulations made by an executive depart- "ment *in pursuance of authority delegated by*

> "*Congress* have the force of law, and the "Courts will take judicial notice of their ex- "istence and provisions."

In the Wilkins case, the indictment charged a violation of a regulation of an executive department, but it was expressly shown that the regulation was promulgated in pursuance of authority delegated by Congress and was made an offense by statute, and the indictment was therefore held sufficient.

In United States vs. Maid, 116 Fed. Rep., 650, it was held that:

> "A criminal offense against the United "States cannot be predicated upon the violation "of a requirement imposed *only* by a rule or "regulation of one of the executive depart- "ments of the government."

Judge Wellborn, in deciding the case, cited United States v. Blasingame, 116 Fed. Rep., 654, in which it was held that rules and regulations made by the Secretary of the Interior for the protection of Forest Reservations were illegal and void, although made in pursuance of a statute, the Court holding the same to be "in substance and effect a delegation of legislative power to an administrative officer."

In the United States vs. Matthews, 146 Fed. Rep., 306, the Court held that the provisions of the sundry civil appropriation act of June 4, 1897, c. 2, 30 Stat., 34 (U. S. Comp. St. 1901, p. 1540), making it a criminal offense to violate any rule or regulation which should thereafter be made by the Secretary of the Interior under the power therein conferred for the protection of forest reservations, is void as an attempted delegation of

legislative power to an administrative officer, and the Court concluded that an indictment would not lie for the pasturing of sheep on a forest reservation without a permit in violation of a regulation made by the Secretary, but which is not prohibited by any statute of the United States. In this case the rules and regulations made by the Secretary of Agriculture to whom the powers of the Secretary of the Interior had been transferred, were set forth in full in the indictment, and regulation 9 contained this clause:

> "Any person responsible for grazing stock
> "without a permit is liable to punishment for
> "violation of the law."

In holding that an indictment would not lie because Congress had not made the violation of such rules and regulations a criminal offense, the Court observed:

> "A citizen desiring to obey the laws, would
> "search the acts of Congress in vain to find
> "that grazing sheep upon a forest preserve
> "without the permit of a Secretary of Agricul-
> "ture is a criminal offense."

And again:

> "The rules and regulations may only be
> "prescribed for carrying out what Congress
> "has expressly declared to be the law. Such
> "powers do not pertain to the legislative func-
> "tions, but are referable to administrative
> "duties. Congress cannot leave a statute to
> "be enlarged upon either by the Courts or the
> "executive department. * * * * * Cer-
> "tainly, here it is the Secretary of Agriculture
> "who has undertaken to enact this law. He it
> "is who has designated that which constitutes

> "the crime. The thing prohibited, the thing
> "for which the party is to be punished, the
> "act which is the offense, is prescribed by the
> "Secretary and not enacted by Congress. As
> "we have seen, this cannot be done. The ob-
> "jection to the indictment is the absence of a
> "law defining the act therein charged as a
> "criminal offense. Upon that ground the de-
> "murrer must be sustained and the defendant
> "discharged."

The Matthews case, supra, is a much stronger case for the Government than the one at bar. There the Secretary was authorized by statute to make certain rules and regulations, whereas in the case at bar, there was no such authorization, either express or implied.

See also

Caha vs. United States, 152 U. S., 211.
Williamson vs. United States, 207 U. S., 425.

In United States v. Keitel, 211 U. S. Rep., 370, a motion to quash the second count of the indictment was granted. That was an indictment for a conspiracy under Section 5440, the object of the conspiracy being averred as a violation of Section 4746, which is expressly penal. The point turned upon a violation of certain rules and regulations of the Secretary of the Interior and the Court wrote:

> "So we view the matter complained of as
> "papers and writings required by rules and
> "regulations and in that condition we find our-
> "selves directly in opposition to the practice
> "declared in United States vs. Eaton, 144 U.
> "S., 667, and many other cases cited. * * *
> "It seems to me that the second count charg-
> "ing an offense would be going in direct con-
> "flict with what is stated in the Eaton case."

This decision as to the second count of the indictment in the Keitel case was affirmed by this Court in United States vs. Keitel, 211 U. S., 370.

See also

United States vs. United Verde Copper Company, 196 U. S., 207.
United States vs. Manion, 44 Fed. Rep., 800.
United States vs. Hoover, 133 Fed. Rep., 950.
Salla v. United States, 104 Fed. Rep., 544.
In re Kollock, 156 U. S., 533.

The most, therefore, that can be spelled out of these indictments is that some sort of a custom has grown up in the Department of Agriculture sanctioned by the Secretary, which custom it is claimed the defendants violated.

Conceding that there was such a custom and that the defendants violated it, can such violation be made the basis of a criminal prosecution when there is no statute imposing any duty upon the Secretary with reference to the subject, when there is no requirement that the report of the cotton crop shall be kept secret and no lawful duty imposed by statute with reference thereto? If this is the law, then an officer in the army who violated a regulation of his superior and wore black gloves when white gloves were required, could be indicted as for a criminal offense. Every violation of any rule or regulation of the head of a department, no matter how trivial, would be a criminal offense. It cannot be the law that a charge of crime can be predicated upon the violation of a rule or regulation of the head of a department unless such rule or regulation is authorized by statute. For the reasons aforesaid, the indictments in the case at bar wherein they at

tempt to charge conspiracy to procure a violation of a rule or regulation of the Department of Agriculture, fail to state a crime or offense against the Laws of the United States.

But counsel for the Government contended, upon the argument in the Circuit Court that the Secretary of Agriculture had promulgated certain regulations which were stated in his brief as follows:

"UNITED STATES DEPARTMENT OF
"AGRICULTURE.

"Office of the Secretary.

"Washington, D. C.

"March 20, 1897.

"General Order No. 2.

"It is hereby ordered that employees of the "Department of Agriculture shall under no cir- "cumstances give out in writing or otherwise, "either for the information of any individual or "for communication to the public, any statement "whatever relating to the business of the Depart- "ment without the written approval of the Chief "of the Bureau, Division or Office to which they "may be assigned for duty, and by such approval "the Chief of any Bureau, Division or Office shall "assume all responsibility to the Secretary for "the statement approved and its publication.

"JAMES WILSON,

"Secretary.

And also that on December 19, 1901, the Secretary of Agriculture had given out the following rule:

"No information in regard to transactions of "an official character is to be communicated to

"any one not connected with the public busi-
"ness."

It will be immediately apparent upon an analysis of these alleged regulations that they have no relevancy to the case at bar. In General Order No. 2 quoted above there is no absolute prohibition against the giving out of information; nor is there any requirement that all information should be kept secret; nor is there any statement whatever about the giving out of information concerning reports upon the cotton crops. The sole prohibition of the regulation is that information, &c., shall not be given out without the "written ap-
"proval of the chief of the Bureau, Division, or
"office to which they may be assigned for duty."
This regulation, by its terms, is applicable to "employees" only. So, if Holmes was an officer, and chief of the Bureau of Statistics as claimed by the Government and alleged in the indictments, the regulation had no application to him.

The indictments aver that Holmes, as associate statistician, in charge of the Bureau of Statistics during the absence of the Statistician. If this was so, then under General Rule No. 2, he had a right to give out information if he desired to do so. The only limitation upon his power being, as stated in the Rule, that "the chief of any
"Bureau, Division, or office shall assume all re-
"sponsibility to the Secretary for the statement
"approved and its publication." The order, therefore, comes to this: That Holmes could give out information if he wanted to, and that if he did so, he was responsible to the Secretary for it. No penalty is attached to a violation of the regulation. It does not in any way refer to the reports

upon the cotton crop or any other crop, and manifestly its only object was to prevent *employees* from "giving out information concerning the business "of the Department without the written approval "of the chief." If the chief of the Bureau gave such written approval, then *he* was made responsible to the Secretary. How can this innocent order be tortured into the claim that it required the reports upon the cotton crops to be kept secret?

The alleged Rule of December 19, 1901, by its terms, relates only to "*transactions* of an official character" and has no reference to the reports upon the cotton crops.

The indictments charge "That during the time " and times aforesaid a custom and practice pre- " vailed in the said Department of Agriculture, " established and sanctioned by the said Secre- " tary, under which the giving out to the public " of any information collected by said Bureau of " Statistics or its said officer, or its said em- " ployees to be used in the preparation of or to " be contained into any of said crop reports, was " prohibited, and the keeping of such informa " tion secret was required, except such informa " tion as was contained in said crop reports when " same had been officially issued and published." If such rule or regulation existed, it has not been called attention to in any brief of counsel; nor can it be found in the Statutes. It is certainly not stated in the rules quoted above.

Judge Hough, in his opinion in United States v. Haas, 103 Fed. Rep. 909 writes:

> " During all the time referred to in the in- " dictments, it was the written and published " rule or regulation of the Agricultural De- " partment (of which judicial notice is taken)

> " that no secret information should be pub-
> " lished or divulged by any subordinate
> " without the written approval of the Bureau
> " chief, which Holmes was not."

The judicial notice of a rule and regulations thus stated to have been taken is not based upon fact, for there is no rule or regulation in the Agricultural Department concerning the giving out of statistics or information relative to the reports upon the cotton crop. Judge Hough evidently had in mind General Order No. 2, but the Court will observe that that order is not applicable to this case. Judicial notice cannot lawfully be taken of a rule or regulation which does not in fact exist, and, if General Order No. 2 is to be considered as applicable to this case, then Holmes, as associate statistician in charge of the Bureau of Statistics in the absence of the Statistician, had the right, under the Order, to authorize the giving out of information if he saw fit to do so.

There is no averment in the indictment that he was not chief of the Bureau of Statistics at the time when the information was given out and there is no presumption that, when he gave out the information, he was not such chief.

In Johnson v. United States 158 Fed. Rep. Page 73, there was a conspiracy to conceal certain property from a trustee in bankruptcy. The trustee, himself was indicted as one of the conspirators and it was held that the indictment did not charge a crime, in that the mere concealment of property was not a prohibited act; the Court writing:—

> " If the facts constituting the purpose when
> " fully stated, show that they constitute no
> " crime, the indictment is fatally defective
> " * * *The Statute does not condemn him for
> " the mere concealment of the property. It

> " is only a concealment by the bankrupt from
> " his trustee that is made criminal by the
> " Statute. If he hid it from the whole world
> " and not from his trustee, he would not
> " violate the Statute. (Pages 71-72.)

It is shown that there is no rule or regulation relating to the giving out of information concerning statistics relative to the cotton crop reports and, if we consider the purpose and object of the organization of the Department of Agriculture and the general effect of the reports, it may be well doubted if it would have been a lawful act on the part of the Secretary to have made a rule requiring that any of these reports, or statistics should be kept secret.

The Department of Agriculture was created for the purpose as stated by Statute. " To gather and " diffuse among the people of the United States " useful information on subjects connected with " Agriculture in the most general and comprehen- " sive sense of that word and to procure, propa- " gate and distribute among the people new and " valuable seeds and plants." It is not suggested by any Statute that this function shall be conducted secretly; nor is there any requirement that any of the reports or statistics shall be kept secret. The very object of the Department is that it should gather information upon topics of agriculture and make them public. The theory of the manner in which this information is to be gathered and diffused comprehends the broadest publicity. As administered in reference to reports upon the crops, the Department of Agriculture has wandered far from its purpose of diffusing useful information among the people. The very methods charged in these indictments of keeping the statistics secret has resulted in inducing numerous citi-

zens and owners of newspapers to engage in competitive conjecture as to what such reports will contain. Instead of diffusing useful information, the methods employed have, as alleged in the indictments, given the reports upon crops an important bearing upon speculation. Useful information about the conditions of the crops has been withheld by the Department from the general public until this branch of the public service has become a speculative instrument, useful more to dealers in futures than to the great body of cotton-growers throughout the United States. The whole policy of the Department, with relation to the reports upon the cotton crop, is, we submit, contrary to the spirit of the law under which the Department was created. These so called crop reports have been shown to be unreliable and it may be well doubted if they serve any useful purpose whatever. By Section 526 of the Revised Statute, the Secretary of Agriculture is directed to collect statistics. By section 520 R. S. he is directed to diffuse this useful information so gathered among the people. There is no direction expressed in or to be implied from any law that the Secretary of Agriculture shall withhold these statistics from publication until such time as he thinks it best to make them public. He is not given by law the power of withholding these statistics for any period of time from the general public.

In the Act of July 5th, 1892, C. 147 is to be found the only reference to a monthly crop report, in the following language:

> " That the monthly crop report issued on
> " the 10th day of each month shall embrace a

"statement of the condition of the crops by
"states in the United States with such ex-
"planations, comparisons and information as
"may be useful for illustrating the above
"matter and that it shall be submitted to
"and officially approved by the Secretary of
"Agriculture before being issued or pub-
"lished."

This provision, originally enacted in the Agricultural Appropriation act of 1880 is repeated, with slight variations in similar appropriation acts of each subsequent year.

In the United States Compiled Statutes at page 294 Vol. 1 Act of July 5th, 1892, the compiler has noted concerning this section:

"It may be questionable whether it is to
"be considered permanent or limited in appli-
"cation to the appropriation for the particu-
"lar year."

There is nothing in the Act of July 5th, 1892 above quoted, which states that the statistics concerning the crop reports are to be kept secret. Before the official publication, the Secretary is to approve the data, but that is all, and that is the only force of the act. Nowhere in the Statutes is there to be found a policy of secrecy concerning the Department of Agriculture or a requirement of secrecy concerning the crop report.

If we concede in argument that a custom or practice in the Department may finally have the force of law so that an act in violation of it would be a crime, can it be that a custom or practice which is contrary to the policy of the Statute and concerning which there is no legal requirement whatever, can ever become of such force or effect that a violation of the custom and practice will be criminal?

This court recently held that rules and regulations cannot be made by a head of a department, which in effect violate the statute, but that rules and regulations can only be made which serve to effectuate the law. We submit that the whole policy of the law, so far as the Department of Agriculture is concerned, contemplates publicity and that any rules or regulations, custom or practice which requires secrecy concerning reports upon the cotton crops or statistics relating thereto, are contrary to the general plan of Congress, requiring such department to diffuse useful information to the general public.

Further answering the suggestion of Judge Hough, that the Court will take judicial notice of the rules and regulations of the Agricultural Department, we suggest to the Court that judicial notice is taken of regulations made by an executive department, only when they are issued pursuant to authority delegated by Congress.

See Wilkins v. United States, 96 Fed. Rep., 837.

In re Kollock, 165 U. S. Rep., page 533, this Court said:

> " We agree that the Courts of the United
> " States, in determining what constitutes an
> " an offence against the United States, must
> " resort to the Statutes of the United States,
> " enacted in pursuance of the Constitution.
> " But here the law required the packages to
> " be marked and branded; prohibited the
> " sale of packages that were not; and pre-
> " scribed the punishment for sales in viola-
> " tion of its provisions; while the regulations
> " simply described the particular marks,
> " stamps and brands to be used. The crim-
> " inal offense is fully and completely defined
> " by the act and the designation by the Com-
> " missioner of the particular marks and brands

> " to be used was a mere matter of detail. The
> " regulation was in execution of, or supple-
> " mentary to, but not in conflict with the
> " law itself; and was specifically authorized
> " thereby in effectuation of the legislation
> " which created the offense."

Upon the argument before Judge Holt, when he discharged the defendant Haas upon the indictments of 1905, Honorable Morgan H. Beach, in arguing as counsel for the Government conceded that there was no regulation in the Department of Agriculture prohibiting the giving out of information concerning reports upon the cotton crop and it was one of the humorous incidents of the Holmes trial that the Secretary of Agriculture, Honorable James Wilson, had himself almost forgotten the existence of the rules which we have hereinbefore quoted.

The statement in two of the indictments that there was a "regulation" in the Department of Agriculture governing this subject is, at best, a mere conclusion of law. Such regulation is not set out in the indictment as it was in the indictment in United States against Matthews, 146 Fed. Rep. 306, in which case it was held in substance that the violation of a rule of the Secretary of Agriculture did not constitute a criminal offense.

> " It is fundamental that the citizen has the
> " right to rely upon the statutes of the United
> " States for the ascertainment of the acts
> " which constitute an infraction of its laws."

See also in Re Kollock, 165 U. S., 533.

The averment that Holmes gave out the information in violation of his duty, does not aid these counts of the indictments because if the other defendants did not have knowledge of the duty which it is claimed was imposed upon Holmes, or

knowledge of the rule of secrecy asserted (and it is not claimed that they did have such knowledge) they are not to be held for criminal wrong-doing by implication or by a presumption that they had knowledge of a custom and practice in the Department of Agriculture.

If we assume for the mere sake of the argument, that a charge of crime may be predicated upon the violation of a custom or practice in a department, it must still remain as one of the essential ingredients of the charge that the accused had knowledge of such custom or practice. Why this averment should be inserted in certain counts of the indictments and omitted from others is not clear, but the fact remains that it is omitted and the counts of the indictments referred to must stand or fall upon their own allegations.

In Salla v. United States, 104 Fed. Rep., 544, the indictment charged the defendants with conspiring to obstruct the passage of the mails, but omitted to allege that such obstruction was "knowingly and willfully effected," and the Court held:

> "As charged in the indictment the conspir-
> "acy is declared to have had for its purpose
> "'to knowingly hinder and delay' the move-
> "ment and passage of a certain railway car
> "and train, which car, it is subsequently al-
> "leged, carried the mails of the United States.
> "It is no offense against the United States to
> "hinder and delay the passage of a railway
> "car, and consequently it is no offense to con-
> "spire or confederate for that purpose. * *
> " * The conspiracy, as charged in the in-
> "dictment, lacks an essential ingredient to an
> "offense against the United States, to wit: that
> "the defendants knew that the mails of the
> "United States were carried on the train which
> "they conspired to obstruct. * * * * *

" The authorities above cited sustain the propo-
" sition *that an indictment for a conspiracy to*
" *commit an offense against the United States*
" *must charge every element of the offense as*
" *fully as if the indictment were for its per-*
" *petration.*"

We submit that in failing to aver that the defendants knew or had reason to know of the alleged custom, practice, regulation or rule of secrecy in the Department of Agriculture, these counts are fatally defective.

VII.

The third, fourth, fifth, sixth, seventh and eighth counts of indictment No. 26,088 and the second count of indictment No. 26,089, are further fatally defective for the reason that it is not in any of said counts alleged that the defendants knew, or had reason to know, of the alleged custom, practice, regulation or rule of secrecy in the Department of Agriculture.

In indictments Nos. 26,086 and 26,087, the first and second counts of indictment No. 26,088 and in the first count of indictment No. 26,089, it is alleged, in substance, and we may take an extract from indictment No. 26,087, as typical of all thereof, that " all and singular of which the " premises and several premises aforesaid, in so " far as they were then existent, were known to a " certain Frederick A. Peckham and to a certain " Moses Haas, at the time of the commission by " them of the offense hereinafter set forth, and " to a certain Lewis C. Van Riper." (fols. 264-265).

"The several premises aforesaid" related, among other things, to the averment that there was a custom and practice in the Department of Agriculture requiring statistics concerning the cotton crop to be kept secret and prohibiting the officers and employees of the department from divulging such information to any person not employed in or connected with the Bureau of Statistics. This allegation of knowledge on the part of the defendants of the alleged "custom and practice" or "regulation" is wholly omitted from the third, fourth, fifth, sixth, seventh and eighth counts of indictment No. 26,088 and from the second count of indictment No. 26,089.

It is conceded by the Government that there was no regular rule requiring the statistics concerning the cotton crop report to be kept secret, or that any rule or regulation had been promulgated to the general public. There is no presumption that these defendants knew of the custom, practice or regulation which it is said was violated. There is no presumption of law that they had knowledge of the fact that such custom or practice prevailed in the Department of Agriculture, or that any such custom, practice or regulation had been followed. It not being alleged that they had knowledge of the fact of the existence of the custom, and there being no presumption of law that they had such knowledge, they cannot be held liable for criminal wrong-doing. "*Ignorantia Facti excusat—Ignorantia Juris non excusat.*"

In Pettibone v. United States, 148 U. S., 197, it is held:

> "That all the material facts and circum-
> "stances embraced in the definition of the of-
> "fense, must be set out, and that if any essen-

> "tial element of the crime is omitted, such
> "omission cannot be supplied by intendment
> "or implication

and

> "the charge must be directly and not inferen-
> " tilly or by way of recital."

In the Pettibone case it is further held that a person is not sufficiently charged in an indictment with obstructing or impeding the due administration of justice in a Court, unless it appears that he knew or had notice that justice was being administered in such Court.

It must be apparent that where the charge of wrong-doing is based upon an alleged violation of a custom, practice, rule or regulation of a department, it must be alleged that the defendants knew or had reason to know that the custom, practice, rule or regulation existed. One dealing with an officer of a department is not charged with knowledge of the custom, practice and regulations of the department to the extent that a violation of the custom or practice will constitute a crime, particularly where, as in the case at bar, such violation is not made penal by statute.

In Wilkins vs. United States, 96 F. R., 837, it is held that regulations to have the force of law must be made by an executive department in pursuance of authority delegated by Congress and that when regulations are so promulgated, the Courts will take judicial notice of their existence and provisions.

There is no rule or regulation " concerning the keeping of reports secret " which Congress has authorized and the existence of such rule is therefore a fact to be pleaded and proven in the same manner as any other fact.

In United States v. Matthews, 146 F. R., 306, it

VIII.

Indictments Nos. 26087, 26089 and the second, third, fourth, fifth, sixth, seventh and eighth counts of indictment No. 26088 are further fatally defective in that they do not allege that the defendants were persons not authorized to receive the information.

In indictment No 26,086 and the first count of indictment No. 26,088, it is averred, in substance, "That the said Frederick A. Peckham, Moses "Hass and Lewis C. Van Riper who then and "there were neither officers nor employees either "of the said Department or of the said Bureau, "and who then and there were persons not in any "manner authorized to have or know the inform- "ation last aforesaid, or be informed as to the "probable contents of the said crop reports in "advance of its said official issuance and pub- "lication, &c."

This averment is omitted from indictments Nos. 26087 and 26089 and from the second, third, fourth, fifth, sixth, seventh and eighth counts of indictment No. 26,088, and its absence renders those indictments and those counts fatally defective.

An examination of indictment No. 26,087 will illustrate the proposition. With reference to the constitution of the Bureau of Statistics and the method and manner of preparing crop reports, it is alleged that a certain custom and practice prevailed in the Department of Agriculture which the secretary had sanctioned and under which "*the giving out to the public* of any information" was prohibited.

It is further stated that all of the officers and employees in the Bureau of Statistics were charged with the duty "of honestly and carefully guarding and "keeping secret and of not divulging to any " person not employed in or connected with the " said Bureau of Statistics information, etc. (Fol. 261).

It is further charged that it was the duty of Holmes to guard and keep the reports secret " and " not to divulge to any person not employed in or " connected with said Bureau of Statistics any of " the said statistics, etc." (Fol. 263-264).

There is no averment in the indictments and counts referred to that the defendants were persons not employed in or connected with the Bureau of Statistics, nor any averment that they were persons not authorized to receive the information.

No criminality could, in any event, be predicated upon the act of Holmes in giving the information to the other defendants if they were persons employed in or connected with said Bureau of Statistics, because it is expressly charged that Holmes was to keep the reports secret and was not to divulge any information concerning them, except that he was at liberty to do so to persons employed in or connected with the Bureau. Had the defendants been employed in or connected with the Bureau of Statistics, no custom or practice of the department would have been violated in giving them the information, and there is no charge in in the indictments and counts referred to that the defendants were not, in fact, employed in or connected with the Bureau of Statistics. The alleged wrong doing must find its basis in the violation of the custom and practice of the department. The indictments allege that a custom and practice prevailed in the Department of Agriculture prohibit-

ing the giving out of information "*to the public.*" Running all through the indictments is the express statement that this ban of secrecy referred only to the general public and not to the persons employed in or connected with the Bureau of Statistics. Therefore, the duty which it is said was imposed upon Holmes referred to the general public only and he did not owe the duty of maintaining secrecy to the other officers or employees of the deparment. The extent of the crime charged must, we submit, be measured by the violation of a duty lawfully imposed upon Holmes and an indictment resting upon such alleged violation of duty must show clearly that the specific act lawfully prohibited, was, in fact, violated.

The giving out of information to an employee or officer of the department would not constitute a violation of the duty imposed upon Holmes.

To again cite the Pettibone case, 148 U. S. 192.

> " All the material facts and circumstances
> " embraced in the definition of the offence
> " must be stated. And if any essential ele-
> " ment of the crime is omitted, such omission
> " cannot be supplied by intendment or impli-
> " cation.

See also United Sates v. Hess, 124 U. S. 486.

The suggestion that to require the indictments to contain an allegation that the defendants were persons not authorized to receive the information is to require the government to plead a negative, is without force, for as held in United States v. McCormick, Federal Cases, No. 15663; 1 Cranch C. C., 593:

> " If a part of the description of the offense
> " consisted of a negative proposition, it is as
> " necessary in an indictment for that offense
> " to state the negative as the affirmative part
> " of that description."

See also Ledbetter v. United States, 170 U. S., 606.

Furthermore, the averment in the indictments that Holmes violated his duty when he gave out information, and that in doing so he obstructed and impaired the orderly administration of the business and affairs of the Department of Agriculture were, at best, mere conclusions of law and cannot be resorted to to determine that the indictments legally charged the commission of prohibited offenses.

Cruikshank v. United States, 92 U. S., 542 558.
Britton v. United States, 108 U. S., 205.
Pettibone v. United States, 148 U. S., 197.
Conrad v. U. S., 127 F. R., 798.
McKenna v. United States, 127 F. R., 88.
Salla v. United States, 104 F. R., 544.

In the Cruikshank case, *supra*, the indictment specifically averred that the act of the defendants was

"With intent unlawfully and feloniously
"to injure, oppress, threaten and intimidate
"two citizens of the United States of African
"descent and persons of color, with the un-
"lawful and felonious intent thereby to hin-
"der and prevent the parties in their respect-
"ive free exercise and enjoyment of the
"rights, privileges and immunities and pro-
"tection granted and secured to them re-
"spectively as citizens of the United States
"and as citizens of the State of Louisiana."

This court held that this language merely stated a conclusion of law, and added:

"In criminal cases, prosecuted under the
"laws of the United States, the accused has
"the constitutional right 'to be informed of
"the nature and cause of the accusation.'
"Amend. VI. In United States v. Mills, 7

" Pet., 142, this was construed to mean, that
" the indictment must set forth the offense
" 'with clearness and all necessary certainty,
" to apprise the accused of the crime with
" which he stands charged'; and in United
" States v. Cook, 17 Wall, 174, that 'every
" ingredient of which the offense is composed
" must be accurately and clearly alleged.'
" It is an elementary principle of criminal
" pleading, that where the definition of an
" offense, whether it be at common law or by
" statute 'includes generic terms, it is not
" sufficient that the indictment shall charge
" the offense in the same generic terms as in
" the definition; but it must state the species
" —it must descent to particulars.' 1 Arch.
" Cr. Pr. and Pl., 291. The object of the
" indictment is, first, to furnish the accused
" with such a description of the charge
" against him as will enable him to make his
" defense, and avail himself of his conviction
" or acquittal for protection against a fur-
" ther prosecution for the same cause; and,
" second, to inform the Court of the facts al-
" leged, so that it may decide whether they
" are sufficient in law to support a conviction,
" if one should be had. *For this, facts are*
" *to be stated, not conclusions of law alone.*
" A crime is made up of acts and intent, and
" these must be set forth in the indictment,
" with reasonable particularity of time, place
" and circumstances." * * * * * (p. 558).

" The accused has therefore the right to
" have a specification of the charge against
" him in this respect, in order that he may
" decide whether he should present his de-
" fense by motion to quash, demur or plea:
" and the Court, that it may determine
" whether the facts will sustain the indict-
" ment."

" So here, the crime is made to consist in
" the unlawful combination with an intent to
" prevent the enjoyment of any right granted
" or secured by the Constitution. * * * All
" rights are not so granted or secured.
" *Whether one is, or not, is a question of law*

" *to be decided by the Court, not the prosecu-*
" *tor.* Therefore the indictment should state
" the particulars, to inform the Court as well
" as the accused. It must be made to appear,
" that is to say, appear from the indictment,
" without going further that the acts charged
" will, if proved, support a conviction for the
" offense alleged." (P. 558).

" This indictment does not in terms aver
" that it was the purpose of the conspiracy to
" violate the injunction referred to, or to im-
" pede or obstruct the due administration of
" justice in the Circuit Court, but it states
" as a legal conclusion from the previous alle-
" gations that the defendants' conspiracy was
" to obstruct and impede. (P. 203.")

If any presumption is to be indulged with respect to these defects in the indictments, then we submit that the presumption that the defendants were authorized to receive the information is entitled to as much weight as the presumption that they were not entitled to so receive it.

The pleader in indictment No. 26,086 and in the first count of indictment No. 26,088, has recognized the principle here contended for, by distinctly averring that the defendents were neither officers nor employees of the department or bureau and they were not entitled to receive the information. The strength of this averment is however, to be seriously questioned as it manifestly relates only to the time of the formation of the conspiracy and non constat but that the defendants would be persons authorized to receive the information at the time it was to be given out. It is an essential ingredient of the crime that the defendants should be persons not authorized to receive the information and this essential ingredient of the offense should have been distinctly averred. Its absence is a fatal defect.

In Evans v. United States, 153 U. S. 584, Mr. Justice Brown remarked:

> "The crime must be charged with precision "and certainty and every ingredient of which "it is composed must be accurately and "clearly "alleged." Citing with approval "United States v. Cook, 17 Wall 168-174; "United States v. Cruikshank, 92 U. S. 542-"558; United States v. Carll, 105 U. S. 611.

In United States v. Britton, 108 U. S. 205, this court held,

> "It follows as a rule of criminal pleading "that in an indictment for conspiracy under "Section 5440, the conspiracy must be "sufficiently charged and that it cannot be "aided by the averments of acts done by "one or more of the conspirators in further-"ance of the object of the conspiracy."

In Conrad v. United States, 127 Fed. Rep. 798, it is held that when the crime charged is a conspiracy to do a criminal act, it must be shown that the act which was the purpose of the conspiracy is a clear violation of law.

In United States, v. Reichert, 32 Fed. Rep. 142, it was held that an indictment for conspiracy in presenting a false, fictitious and fraudulent claim to the United States surveyor general for allowance and payment was defective, as it should also show that such officer was authorized and allowed to prove the claim.

The use of the word "unlawfully" does not supply this deficiency in the indictments. An unlawful conspiracy is not necessarily one to commit a crime as pointed out in the Greene case, *supra*, where it is said that intent being the gravaman of the offense, it must be distinctly averred.

Fox v. United States, 95 U. S. 670.

People v. Lohman, 2 Barb. 218.

For the omission stated, the indictments and counts referred to were further fatally defective.

IX.

Holmes was not an officer of the United States or a person acting for or on behalf of the United States in an official function under or by virtue of any department or office of the government thereof. There was no question, matter, cause or proceeding at any time pending in connection with the cotton crop reports, which could by law be brought before him in an official capacity, or upon which his decision or action could be influenced. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop.

In the first Washington indictment, known as No. 26086 (fols. 248-255), it is averred:

> "The said Edwin S. Holmes, Junior, be-
> "fore and on the day last aforesaid was an
> "officer and employe of the said Department
> "and Bureau, to-wit: Associate Statistician
> "thereof."

In the second Washington indictment (fols. 257-270), it is alleged that

> "Edwin S. Holmes, Junior, held and oc-
> "cupied the office of and was such Associ-
> "ate Statistician in the said Bureau of Sta-
> "tistics in the Department of Agriculture,
> "and as such was an officer of the United
> "States and a person acting for and on be-
> "half of the United States in an official func-
> "tion under and by virtue of the said De-
> "partment and Bureau, and as such Asso-
> "ciate Statistician the said Edwin S.
> "Holmes, Junior, was during the period last

" aforesaid charged with the duty of aiding
" and assisting the said statistician in the
" preparation of said crop reports, includ-
" ing said cotton crop reports."

It is further stated that Holmes was " Charged with the duty " of doing other matters and things in connection with said cotton crop reports, specifically enumerated in the indictments.

The third and fourth Washington indictments are similar to the second one in the respect mentioned, with the exception that in the second count of the third indictment Holmes is again referred to as " associate statistician in the Bureau of Statistics."

The evident intent of these allegations in the indictments is to bring them within the scope of Section 5451 of the Revised Statutes, which reads as follows:

" BRIBERY OF ANY UNITED STATES OFFICER:
" Every person who promises, offers, or
" gives, or causes or procures to be prom-
" ised, offered, or given, any money or other
" thing of value, or makes or tenders any
" contract, undertaking, obligation, gratuity
" or security for the payment of money, or
" for the delivery or conveyance of anything
" of value, to any officer of the United States,
" or to any person acting for or on behalf of
" the United States in any official function,
" under or by authority of any department
" or office of the Government thereof, or to
" any officer or person acting for or on be-
" half of either House of Congress, or of
" any committee of either House thereof,
" with intent to influence his decision or ac-
" tion on any question, matter, cause, or pro-
" ceeding which may at any time be pending,
" or which may by law be brought before

" him in his official capacity, or in his place " of trust or profit, or with intent to influ- " ence him to commit or aid in committing, " or to collude in, or allow, any fraud, or " make opportunity for the commission of " any fraud, on the United States, or to in- " duce him to do or omit to do any act in " violation of his lawful duty, shall be pun- " ished as prescribed in the preceding sec- " tion."

Section 5451, supra, affects:

1. Any officer of the United States.

2. Any person acting for or on behalf of the United States in an official function, under or by authority of any department or office of the Government thereof.

3. Any officer or person acting for or on behalf of either House of Congress.

4. Any officer or person acting for or on behalf of any committee of either House.

5. Any officer or person acting for or on behalf of both Houses.

It is a highly penal statute and must be strictly construed.

Taking the above provisions in their order was Holmes an officer of the United States?

The Department of Agriculture was established by the Act of May 15, 1862; it was originally in charge of a Commissioner of Agriculture, but the Act of February 9, 1889, constituted it one of the executive departments under the control of a Secretary. Under the heading of " Clerks and Employees " in the Department of Agriculture, we find a Chief Clerk and Statistician, but no

mention whatever is made in the statute of an "Associate Statistician" or an "Assistant Statistician." The Secretary of Agriculture is empowered to employ different employees in his office to render purely clerical services, but such clerks are not officers, nor does the statute authorize the Secretary to create additional officers.

In United States v. Germaine, 99 U. S., 508, it was held that civil surgeons, appointed by the Commissioner of Pensions under Section 4777 of the Revised Statutes, are not officers of the United States. In the opinion, Mr. Justice Miller writing, it is held:

> "The Constitution for purposes of appointment very clearly divides all its officers into two classes. The primary class requires a nomination by the President and confirmation by the Senate. But foreseeing that when offices became numerous, and sudden removals necessary, this mode might be inconvenient, it was provided that, in regard to officers inferior to those specially mentioned, Congress might by law vest their appointment in the President alone, in the courts of law, or in the heads of departments. That all persons who can be said to hold an office under the government about to be established under the Constitution were intended to be included within one or the other of these modes of appointment there can be but little doubt. This Constitution is the supreme law of the land and no act of Congress is of any validity which does not rest on authority conferred by that instrument. It is, therefore, not to be supposed that Congress, when enacting a criminal law for the punishment of officers of the United States, intended to punish any one not appointed in one of those modes. If the pun-

> " ishment were designed for others than of-
> " ficers as defined by the Constitution, words
> " to that effect would be used, as servant,
> " agent, person in the service or employment
> " of the Government; and this has been done
> " where it was so intended, as in the six-
> " teenth section of the Act of 1846, concern-
> " ing embezzlement, by which any officer or
> " agent of the United States and all persons
> " participating in the Act are made liable.
> " 9 Stat., 59."

If we look to the nature of defendant Holmes' employment we find it entirely clear that he is not an officer. In the Germaine case the Court said the term " officer " embraces the ideas of tenure, duration, emolument, and duties, and that the latter is continuing and permanent, not occasional or temporary.

Nowhere in any statute is there a provision for an associate statistician in the Department of Agriculture, so that said alleged office cannot be said to embrace the ideas of tenure, duration, emolument and duties.

In United States v. Mouat, 124 U. S., 303, Mr. Justice Miller again writing, this Court defined the elements necessary to constitute a person an officer of the United States, fully approving the reasoning in United States v. Germaine, supra, and adding:

> " Unless a person in the service of the
> " Government, therefore, holds his place by
> " virtue of an appointment by the President,
> " or of one of the Courts of justice, or heads
> " of departments *authorized by law to make*
> " *such an appointment*" (italics ours) " he
> " is not, strictly speaking, an officer of the
> " United States."

In United States v. Smith, 124 U. S., 525, the indictment was against a person designated as a clerk in the office of the Collector of Customs, and although the indictment alleged that such clerk was charged with the safe-keeping of public moneys, this Court held that as there was no act of Congress charging such clerk with the said duty, he was not, within the purview of the indictment. This Court held, Mr. Justice Field writing:

> "A clerk of the Collector is not an officer "of the United States within the provisions "of this section (3639), and it is only to "persons of that rank that the term 'public "'officer,' as there used, applies."

This Court again expressly approved the Germaine case.

It was further held that the statements in the indictment were not conclusive, the Court adding:

> "The Courts of the United States are presumed to know the general statutes of "Congress, and any averment in an indictment inconsistent with a provision of a "statute of that character must necessarily "fail, the statute negativing the averment.
> "* * * * * * * * *
> "It is true the indictment alleges that "the appointment of the defendant as clerk "was made with such approbation, but as "no law required this approbation, the averment cannot exert any influence on the "mind of the Court in the disposition of the "questions presented." (Page 533).

In Auffmordt v. Hedden, 137 U. S., 310, it was

held that a merchant appraiser was not an officer, and the Court in deciding the point approved the Germaine case, supra.

In United States v. McDonald, 72 Fed. Rep., 898, decided in the Circuit Court of Appeals for the Ninth Circuit, it was held that a clerk in the office of the District Attorney is not a Government officer.

In United States v. McCrory, 91 Fed Rep., 295, decided in the Circuit Court of Appeals for the Fifth Circuit, it was held that letter carriers are officers of the United States because they are appointed by the Postmaster General under authority of the acts of Congress, are sworn and give bond for the faithful performance of their duties, are paid from moneys appropriated for the purpose by Congress, having salaries fixed by law, and regularly prescribed services to perform, their duties being continuing and permanent, not occasional and temporary.

In United States v. Cole, 130 Fed. Rep., 614, it was held that the cashier of a mint, appointed under Revised Statutes, Section 3504 (U. S. Comp. Stat., 1901, p. 2340), providing that the superintendent of a mint shall appoint assistants and clerks, is not an officer of the mint within Section 3506; and, upon the theory that the cashier was not such officer, he was not held liable for the theft of money from the vault of the mint by the chief clerk.

In United States v. Schlierholz, 137 Fed. Rep., 616, it was held that a special agent of the Land

Department of the United States, appointed under Appropriation Act June 4, 1897, c. 2, 30 Stat. 32, which provided no fixed salary, tenure of office, or person with power to appoint, was not an officer of the United States within Section 5481 of the Revised Statutes.

In United States v. Gibson, 47 Fed. Rep., 833, the motion to quash an indictment under Section 5451 was sustained, the Court holding:

> " It is too clear to require argument that " if it is not a crime under any law—of the " United States for an internal revenue of- " ficer to set fire to a distillery, of his own " volition or impulse, without the influence " or request of another, then it is not a crime " against the United States for another per- " son to bribe him to do it."

Upon this branch of the case, when it was before him upon the indictments of 1905, Judge Holt in discharging the defendant Haas from custody wrote:

> " In my opinion, on the facts alleged, it is " doubtful whether Holmes was a public of- " ficer. He is described in the indictment as " an ' associate statistician ' in the Bureau " of Statistics of the Agricultural Depart- " ment. The Act of July 14, 1890, c. 707, " 26 Stat., 288 (U. S. Comp., Stat. 1901, p. " 286), enumerates the persons engaged in " the Department of Agriculture under the " special title of ' Clerks and Employes.' " This list includes a statistician; there is no " mention in it of such a person as an ' as- " ' sociate statistician.' But, as the statis- " tician is put under the list of clerks and " employes, the presumption is that an asso- " ciate statistician is a clerk, and not a pub- " lic officer, within the meaning of the law

" and in a legal sense. A mere clerk in a " public office is not a public officer. United " States v. Smith, 124 U. S., 525, 8 Sup. Ct., " 525, 31 L. Ed., 534.

" In the next place, the duty violated in " misconduct in office must be a legal duty. " The indictment alleges that Holmes was " charged with the duty of keeping secret " the cotton crop reports, but the indictment " contains no allegation showing how he was " charged or by what authority he was " charged. In The King v. Everett, 8 Barne- " wall & Cresswell's Reports, 114, the defend- " ant was indicted for soliciting a customs " officer to permit goods to be imported " without paying duty. The defendant was " convicted. A motion was made in arrest " of judgment on the ground that the indict- " ment did not allege the fact from which " the duty arose. Lord Tenterden said: " ' The allegation that Hooper was a person " ' employed in the service of the customs is " ' an allegation of fact. The allegation that " ' it was his duty to seize goods which upon " ' importation were forfeited is an allega- " ' tion of matter of law. That being so, the " ' fact from which that duty arose ought " ' to have been stated in the count.'

" A fair inference from the language of " this indictment is, and the counsel for the " Government admits, that there had been " no formal rule promulgated imposing a " duty upon the employes of the Agricultural " Department to keep the crop information " secret before it was published. It may be " assumed that it was understood in the of- " fice that it should be kept secret, and that " it was a dishonorable act on the part of " Holmes to publish it; but we are dealing " with a question of crime. Unfaithful, dis- " honorable, or treacherous conduct, how- " ever censurable morally, is not a crime, un- " less made so by law. If Holmes, under this " indictment, can be convicted of crime, the " secretary of a judge who reveals the con-

"tents of a judge's opinion before it is
"handed down, or an attorney who betrays
"the confidence of his client, or a senator
"who tells what had taken place in execu-
"tive session, could be convicted of crime,
"without any statute on the subject."

(United States v. Haas, 167 Fed. Rep., 211; quotation from pp. 214-215.)

United States v. Ingham, 97 Fed. Rep., 935, is not in conflict with the other decisions upon this point, it being held by Judge McPherson that a secret service operative, employed by the Secretary of the Treasury to aid in the detection and suppression of frauds and crimes against the revenue laws, was not an officer of the United States.

We submit that upon the foregoing authorities it cannot be maintained that Holmes was an officer of the United States.

2. Was Holmes a person acting for or on behalf of the United States in any official function under or by virtue of any department or office of the government thereof?

All of the Washington indictments allege in substance:

"That before and during the three years
"last past the United States, through the
"Department of Agriculture and a certain
"bureau of that Department, to-wit: the
"Bureau of Statistics, has exercised the gov-
"ernmental function of acquiring and dif-
"fusing among the people of the United
"States useful information on subjects con-
"nected with agriculture, including the sub-
"ject of cotton."

As before stated, the Department of Agriculture was created by the Act of May 15, 1862, in the following language:

> " ESTABLISHMENT OF THE DEPARTMENT OF
> " AGRICULTURE.
>
> " There shall be at the seat of government
> " a Department of Agriculture, the general
> " design and duties of which shall be to ac-
> " quire and to diffuse among the people of
> " the United States useful information on
> " subjects connected with agriculture in the
> " most general and comprehensive sense of
> " that word, and to procure, propagate and
> " distribute among the people new and val-
> " uable seeds and plants, Act May 15, 1862,
> " c. 72, sec. 2, 12 Stat. 387. (U. S. Comp.
> " Stat. vol. 1, p. 284)."

When the Department of Agriculture was changed into an executive department by the law of 1889, it was brought within the scope of Section 169 of the Revised Statutes (U. S. Comp. Stat., vol. 1, p. 85), which reads as follows:

> " AUTHORITY TO EMPLOY CLERKS AND OTHER
> " EMPLOYES.
>
> " Each head of a department is authorized
> " to employ in his department such number
> " of clerks of the several classes recognized
> " by law, and such messengers, assistant
> " messengers, copyists, watchmen, laborers,
> " and other employes, and at such rates of
> " compensation, respectively, *as may be ap-*
> " *propriated for by Congress from year to*
> " *year*." (Italics ours.)

Nowhere in the statute is there any provision for an associate statistician. Holmes not being an officer of the United States, he could not, therefore, be a person acting for or on behalf of

the United States in an official function unless his appointment were sanctioned by statute. Congress has never created the office of associate statistician nor is it created by the Constitution. The duties of the Secretary are specifically described by statute as follows:

> "The Commissioner" (now the Secretary) "of Agriculture shall procure and preserve all information concerning agriculture which he can obtain by means of books and correspondence, and by practical and scientific experiments, accurate records of which experiments shall be kept in his office, by the collection of statistics, and by any other appropriate means within his power, he shall collect new and valuable seeds and plants; shall test, by cultivation, the value of such of them as may require such tests, shall propagate such as may be worthy of propagation, and shall distribute them among agriculturists."

The only reference found in the statutes to the crop reports is in 32 Stat. L., 300 (an appropriation Act), where it is provided:

> "That the monthly crop report issued on the tenth day of each month shall embrace a statement of the condition of the crops, by States, in the United States, with such explanations, comparisons, and information as may be useful for illustrating the above matter; and that it shall be submitted to and officially approved by the Secretary of Agriculture before being issued or published."

The above quotation is from the Appropriation Act of June 3rd, 1902, chap. 985. Similar provisions occur in prior appropriation acts (see

31 Stat. L., 194; 31 Stat. L., 934; 30 Stat. L., 950; 30 Stat. L., 4; 29 Stat. L., 101; 28 Stat. L., 729; 28 Stat. L., 266; 27 Stat. L., 737; 27 Stat. L., 76). Concerning this provision the Compiler's note, 2 Supp. R. S., 231, reads:

> " It has not been authentically determined " whether this is a permanent provision of " law or applicable only to the year for " which the appropriation is made."

Diligent search of the statutes relating to the Department of Agriculture fails to reveal any provision of law requiring the crop reports to be kept secret, or making it criminal to divulge such information. Nor is there any language in the statutes, or in the appropriation acts, from which it could be spelled out that Holmes was anything more than a mere clerk.

Furthermore, the statute does not impose upon the Secretary of Agriculture the specific duty of preparing a report upon the cotton crop. The preparation of the cotton crop report is evidently a matter which has grown up in the Department from the necessities of conditions in the country, without any particular legal sanction. We agree that the violation of the confidence reposed in a clerk, and of the good faith expected from him, is to be deplored, but such violation has never been held to be a crime unless expressly made so by statute. At most, therefore, the indictments charge a violation of a rule or practice of the Department of Agriculture, and in violating such rule, however reprehensible, Holmes was not violating an " official function " of the Secretary of Agriculture, because the statute imposes no duty upon the Secretary to prepare a report upon the

cotton crop, or to keep it secret when prepared.

The requirement that crop reports "shall be "submitted to and officially approved by the "Secretary of Agriculture before being issued or "published" is declaratory merely of a custom of the Department, but the violation of such custom is not made an offense by any penal statute.

The Ingham case, 97 Fed. Rep., 935, is apparently contrary to the views herein expressed in one respect. In that case Judge McPherson held that a secret-service operative, employed by the Secretary of the Treasury to aid in the detection and suppression of crimes or frauds against the revenue laws, *with which duty the Secretary is charged*, while in the performance of such service, is acting on behalf of the United States in an official function of the Secretary. Counsel for the defendants in that case argued that no one can exercise an official function unless he be an officer of the United States. Judge McPherson wrote:

> "The official function spoken of is not "necessarily a function belonging to an office held by the person acting on behalf of "the United States; it may also be a function belonging to an office held by his superior, which function has been committed "to the subordinate (whether he be also an "officer or a mere employe) for the purpose "of being executed. Thus—turning to the "facts of the present case—it is an official "function of the Secretary of the Treasury "to detect and suppress certain crimes and "by his authority lawfully exercised, the execution of this function has been (at least "in part) entrusted to the secret-service operatives, who thereupon act in behalf of

" the United States as his subordinates or
" employes. The law lays the function upon
" him, but as he cannot do the work alone he
" is of necessity permitted to appoint others
" to share in the labor, and in this particular
" such appointee stands in his place. What
" the precise limits of an official function
" may be I do not attempt to lay down."

It will be observed that Judge McPherson rests his decision upon the proposition that the law lays the " function " of detecting crimes against the revenue laws upon the Secretary of the Treasury. In the case at bar the law does not put upon the Secretary of Agriculture the duty or function of keeping the crop reports secret. In fact, the very object of the Department of Agriculture is to diffuse information to the public. It may be well doubted whether the custom which it is alleged has grown up in the Department of keeping the information secret until a certain date, serves any useful purpose. Apparently this provision of secrecy has operated not so much for the benefit of the farmers and producers of cotton throughout the country as it has for the benefit of speculators in the market, for the indictmen's inform us that these crop reports exerted a certain and well understood influence upon quotations in Wall Street. On this branch of the case United States Judge Ward, in Haas v. Henkel, 166 Fed. Rep., at page 626, wrote as follows:

" But no provision of law requires the
" statistics collected to be kept secret until
" the official publication of the monthly re-
" ports, and I cannot see that the United
" States was in any respect defrauded by the
" publication of these statistics to individu-

> " als before the official publication to the
> " country at large. There is no ground for
> " presuming that Congress intended to pre-
> " vent individuals obtaining information in
> " advance of its general publication. Such
> " persons would of course have an advantage
> " in trading in cotton with others who had
> " not that information; but I do not see that
> " the United States would be in any way de
> " frauded either of its property or of its
> " rights. We should not be induced by our
> " contempt for or indignation at such con-
> " duct as is set forth in the indictments to
> " turn it into a crime if it is not one."

Judge Ward further held that the crop reports were not required by any statute, writing:

> " The Department of its own motion be
> " gan to make monthly crop reports be
> " tween June and December of every year."

It is evident that the preparation of the cotton crop reports is a matter which has grown up in the Department without any particular legal sanction. We submit that the words " official function " must mean some official duty or obligation imposed by law, and cannot mean any act or course of conduct which the head of a department may see fit to institute. As there was no duty or obligation imposed upon the Secretary by law with reference to the cotton crop reports, his act with reference to such reports cannot constitute an "official function."

In the Ingham case, supra, the Secretary of the Treasury was expressly required by statute to detect crimes against the revenue laws. If a statute imposed upon the Secretary of Agriculture the duty of issuing the cotton crop report and of keeping it secret, then manifestly whatever he did with

reference to that would be the exercise of an official function, and a person lawfully acting with him might be held to be a person exercising an official function in that respect. But where there is no prescribed duty and the head of a department is merely carrying out a custom which has grown up in the Department, can such custom be held to be an "official function?" In the interpretation of the criminal laws it has been uniformly held that certainty shall be required and that words shall have an estblished and fixed legal meaning.

The words "Official Function," as used in Section 5451, must clearly mean a duty imposed by law. The inquiry upon this branch of the case therefore resolves itself into this question: Has Congress imposed upon the Secretary of Agriculture the duty of issuing reports upon the cotton crop and the further duty of keeping such reports secret? The statutes do not contain such requirement, and therefore, while whatever the Secretary may do in and about the conduct of his office is necessarily connected therewith, still a charge of crime cannot be predicated upon an act which is not made an official function, obligation or duty by express command of law.

The statement in the indictments that Holmes was "charged with the duty" &c., is but the conclusion of the pleader, because there is no statute imposing, either upon the Secretary or any one connected with the Department of Agriculture, the "duty" to which the indictments refer, and, as held in the Smith case, 124 U. S., 525, the averments of an indictment are not conclusive and if negatived by statute are not entitled to consideration.

Holmes was not required by law to render an official decision upon any subject, nor were his duties in any way prescribed, nor did he occupy a position which a statute had even dignified by a name. He was a clerk and a clerk only, and in the performance of his services to the Department of Agriculture he did not at any time carry out any function, obligation or duty of the Secretary of Agriculture.

It has been alleged by counsel for the government heretofore in answer to this argument, that inasmuch as the annual Appropriation Act provided for the salary of an associate statistician that he was impliedly thus made an officer of the United States. That an officer of the government cannot be made by implication is elementary, as held in the Schlierholz case, 137 Fed. Rep., 616, in the following language:

> "The very fact that the appropriation is "so general proves conclusively that neither "Congress, nor the head of the department "who asked for the appropriation, could "state with any degree of certainty what "persons it might be necessary to employ, "and what duties such employees might be "called upon to discharge. Congress, "therefore, wisely left the entire matter to "the discretion of the Secretary of the In-"terior, limiting him only in the one item of "expense for subsistence. That the persons "thus employed are not officers within the "meaning of the constitutional provision, has "been decided by the Supreme Court in "several cases. * * * * * There is "nothing in any of the acts under which de-"fendant was employed fixing the tenure, "duration, emolument, and duties of his "position.

Judge Cooley, in People v. Langdon, 40 Mich., 673, in holding that the chief clerk in the assessors office of Detroit, appointed under a law providing

> "The assessor is hereby authorized to employ such clerical assistance as the business of the office may render necessary, and such clerical assistance shall receive such compensation per diem as the common council shall from time to time fix by resolution,"

is not an officer, gave the following legal definition of what constituted "office:"

> "An office is a special trust or charge created by competent authority. The officer is distinguished from employe in the greater importance, dignity and independence of his position; in being required to take an official oath, and perhaps to give official bond; in the liability to be called to account as a public offender for misfeasance or non-feasance in office, and usually, though not necessarily, in the tenure of his position."

From the foregoing decision, it is clear that Holmes was not an officer of the United States; also that he was not acting in an official function in keeping reports secret, because there was no statutory requirement to that effect. Nor is it claimed that he was an officer or person acting for or on behalf of either House of Congress or of any committee of either House or of both Houses thereof. Holmes was a mere clerk or employee, not charged with any particular duty, and he could not exercise a function, obligation or duty of the Secretary of Agriculture with reference to the cotton crop report, because no such function, obligation or duty was imposed upon the Secretary himself.

X.

If Holmes was a public officer, as claimed by the Government, the indictments in which he is joined as a defendant are fatally defective, because Holmes could not conspire with himself to bribe himself or to influence himself or to induce himself to commit the alleged offense of misconduct in office.

If, for the mere sake of the argument, the contention of the Government that Holmes was a public officer of the United States be conceded, it then follows, as a logical conclusion, that he could not conspire with himself to induce himself to commit a crime and those indictments in which he is joined as a defendant are for said reason insufficient and did not confer upon the Commissioner jurisdiction to commit the defendant Haas for removal to the District of Columbia.

There are two indictments in the Washington jurisdiction and two likewise found in the Southern District of New York wherein Edwin S. Holmes, Jr., is joined as a defendant. In the first of these indictments, No. 26,086, the conspiracy charged is "To defraud the United States of and "concerning its governmental function in the "matter of issuing and publishing the cotton "crop report to be issued and published by the "said department and bureau in the next suc- "ceeding month of June, and of its right to ad- "minster an intelligent and honest service in "that behalf in the interests of the people of the "United States, to be accomplished" by certain means and methods in the indictment set forth.

The other Washington indictment, No. 26,088, consists of eight counts and includes the charge of conspiracy for the purpose of inducing Holmes to commit the crime of misconduct in office.

The specific objection to the indictments in this respect will be discussed later and we will here merely call the attention of the Court to the general rules of law applicable to the subject.

In United States v. Dietrich, 126 Fed. Rep., 664, the conspiracy charged was an agreement between a member of Congress and a citizen, whereby a stated bribe was to be received by the former and given by the latter as the price of the former's abusive or perversive use of the influence incident to his official station, the Court held:

> "The making of such an agreement is not "a conspiracy within the terms of section "5440, but is a several and substantive of- "fense under section 1781 upon the part of "each of the parties, and this without the "doing of any overt act in pursuance thereof "* * * * * * * As the transaction is "stated in the indictment, it was Dietrich who "agreed to receive the bribe, not Dietrich and "Fisher, and it was Fisher who agreed to give "the bribe, not Fisher and Dietrich. * * * "* * * The agreement or transaction "stated in this indictment was immediately "and only between two persons, one charged "with the intended taking and the other with "the intended giving of the same bribe. Con- "cert and plurality of agents in such an agree- "ment or transaction are, in a sense, indis- "pensable elements of the substantive offenses "defined in Section 1781 of agreeing to receive "a bribe and of agreeing to give one. A per- "son cannot agree with himself, receive from "himself or give to himself. The concurrent "and several acts of two persons are necessary "to the act of acquiring, receiving or giving.

See also 2 McClain's Cr. L. Sec. 959.
Shannon v. Commonwealth, 14 Penn. 226.
Miles v. State, 58 Ala., 390.
State v. Butler, 8 Wash., 194; 35 Pac., 1093; 25 L. R. A., 434; 40 Am. St. Rep., 900.

Again in the Dietrich case, Judge Van Devanter wrote at page 667:

"The fact that Section 1781 makes the act "of agreeing to receive and also that of agree- "ing to give a bribe, under the circumstances "and for the purpose described in this indict- "ment, a substantive offense, even though the "bribe be not actually received or given, brings "this case fully within the rule so stated. Be- "cause concert and plurality of agents, in the "sense we have hereinbefore shown, are es- "sential to each of the offenses. There are "two, not one—the commission of which is "charged to have been the object of this so- "called conspiracy, and because no other con- "cert and plurality of agents are here charged, "we are of the opinion that the acts described "do not constitute a conspiracy under section "5440."

Wharton in his work on Criminal Law also discusses this subject in the following language:

"When to the idea of an offense, plurality of "agents is logically necessary, conspiracy, "which assumes the voluntary accession of a "person to a crime of such a character as that, "is aggravated by a plurality of agents, and "cannot be maintained. * * * * "We "have," he says, "the well known distinction "between concursus necessarius and concur- "sus facultativus—in the latter of which the "accession of a second agent to the offense is "an element added to its conception; in the "former of which the participation of two "agents is essential to its conception; and

> " from this it follows that conspiracy, the gist
> " of which is combination added to crime, does
> " not lie for concursus necessarius."

See 2 Wharton's Cr. Law, Sec. 1339.

The doctrine of the Dietrich case, supra, was quoted with approval in Chadwick v. United States, 141 Fed. Rep., 225, decided in the Circuit Court of Appeals for the Sixth Circuit. Judge Lurton writing, said:

> " The concurrent acts of two persons were
> " essential to the offense which it was the ob-
> " ject of the conspiracy to commit. Dietrich
> " could not agree to receive a bribe unless some
> " other should agree to give him one. Under
> " section 1781 Rev. St. (U. S. Comp. St., 1901,
> " p. 1212), the act of ' agreeing ' to receive such
> " a bribe was a substantive offense, and the
> " act of agreeing to give such a bribe another.
> " Concert of action was, therefore, essential
> " to the violation of section 1781, charged as
> " the purpose of the conspiracy.

In United States vs. New York Central & Hudson River Railroad Company, 146 Fed. Rep., 298, Judge Holt in the Southern District of New York reaffirmed the rule and added:

> " The counsel for the government asser-
> "t hat the Dietrich Case is to be distinguished
> " from this case because in the Dietrich case
> " but two persons—the giver and taker of the
> " bribe — were charged with the conspiracy
> " in the indictment, while in the case at bar
> " the indictment charges that seven persons
> " named and others to the jurors unknown were
> " parties to the conspiracy. But only four
> " of the seven persons named are indicted, and
> " of those four Guilford an Pomeroy repre-
> " sent simply the giver, and Edgar and Earle
> " simply the receiver of the rebate."

When these well known principles are applied to the indictments under consideration, their inherent vice will at once appear. For instance, in the fourth Washington Indictment, No. 26,088, it is charged that the "Said Edwin S. Holmes, Jr., "the said Moses Haas and the said Theodore H. "Price, unlawfully, corruptly, and fraudulently "did conspire, combine, confederate and agree "together and and with divers other persons to "the Grand Jurors aforesaid unknown, to com-"mit an offense against the United States, that "is to say, the offense of misconduct on the part "of him, the said Edwin S. Holmes, Jr., in his "said office of associate statistician in the said "Department of Agriculture, to be done and com-"mitted by him, the said Edwin S. Holmes, "Junior, in the dishonest and corrupt manner "and through and by the means of the dishon-"est and corrupt scheme and arrangement fol-"lowing," &c. While the offense of misconduct in office is not, we submit, made a crime by any Federal Statute, it has been contended by the Government upon previous arguments, that such alleged crime was an offense at common law, and that because of the cession of the District of Columbia to the United States from Maryland, the offense of misconduct in office, which was an offense in the State of Maryland, became an offense in the District of Columbia, although not so elsewhere.

Granting, for the sake of the argument, that misconduct in office is an offense in the District of Columbia and that an indictment will lie therefor, it is clear upon the foregoing authorities that an indictment for conspiracy will not lie where Holmes himself is joined as one of the conspira-

tors. How could he conspire with himself to induce himself to commit the crime of misconduct in office? The offense of misconduct in office, if an offense, is a substantive one and Holmes could not conspire with Price and Haas to corruptly influence his own conduct, official or otherwise. The same defect is repeated in the sixth and eighth counts of the same indictment.

Within the definition given by Wharton, quoted above, and the authorities cited these allegations of the indictments are defective and void, do not charge a crime and conferred no jurisdiction upon the Commissioner to commit the defendant Haas for removal.

See also,

Thomas vs. U. S., 156 F. R., 903.
Johnson vs. U. S., 158 F. R., 69.

An officer accepting a bribe is to be punished under Sec. 5501 R. S.

XI.

The removal complaints filed with the United States Commissioner did not confer jurisdiction upon him to hold and commit the defendants for removal, as there was no proof whatever of the issuance of bench warrants or that defendants were wanted within the District of Columbia. Removal proceedings must be based upon the fact that the accused is wanted in the demanding jurisdiction and the absence of such proof is a jurisdictional defect.

On June 24, 1908, *after the defendant had been arraigned upon the New York indictments and had*

demurred thereto, there was presented to John A. Shields, Esq., United States Commissioner, two affidavits of Honorable Goldthwaite H. Dorr, an Assistant United States Attorney for the Southern District of New York, in which affidavits Mr. Dorr stated that on the 29th day of May, 1908, four indictments had been found in the District of Columbia, as aforesaid, against the several defendants named. He annexed to these affidavits certified copies of the indictments so found, and, *upon the information and belief derived therefrom*, averred that the defendants had committed the crimes alleged in the District of Columbia. (See Affidavit relative to Indictments, Nos. 26086 and 26087; fols. 243-246; and affidavit relative to Indictments Nos. 26088 and 26089; fols. 276-284.)

There was no bench warrant issued from the District of Columbia attached to these affidavits and moving papers. *Nor was there any statement whatever, in either of the affidavits of Mr. Dorr, that the defendants were wanted for trial in the Washington jurisdiction.*

In legal effect there was nothing before the Commissioner but the four Washington indictments. While this Court has considered the proposition that in removal proceedings an indictment is *prima facie* evidence of probable cause (Benson v. Henkel, 198 U. S., 1), we cannot find any case which has gone to the extent of holding that the mere filing of an affidavit with a Commissioner, to which certified copies of the indictments are attached, and in which affidavit it is not stated that the defendant is wanted in the foreign jurisdiction, is sufficient.

The affidavits and removal complaints filed by Mr. Dorr with the Commissioner in this case con-

tain no averment that the defendant Haas is wanted in the District of Columbia. Notwithstanding the fact that the indictments were found against him in that district, it does not follow but that they may have been dismissed or that it is not desired to proceed upon them. An indictment is *prima facie* evidence of the fact that an accusation has been made against the defendant, but is it, standing alone and unsupported by a bench warrant, evidence of the fact that the foreign jurisdiction desires the accused for trial?

In Compton v. State of Alabama, 214 U. S. 1, this Court held:

> "Unless the State demanding the return
> "of the alleged fugitive from justice fur-
> "nishes a copy of the indictment against the
> "accused, or an affidavit before a magis-
> "tra'e, as provided by Section 5278, Revised
> "Statutes, the executive of the State upon
> "whom the demand is made, may decline to
> "honor the requisition; and, in the absence
> "of such indictment or affidavit, no author-
> "ity is conferred upon him by Section 5278,
> "Revised Statutes, to issue his warrant of
> "arrest for a crime committed in another
> "State."

What was there before the Commissioner in this case after the removal complaints had been filed with him by Mr. Dorr, to show that the defendant Haas was wanted in the District of Columbia?

Section 5278 of the Revised Statutes, although not strictly applicable to this point, is still conclusive of the proposition that the theory of the law is that *the accused must be wanted in the de-*

manding jurisdiction. That section reads in part as follows:

> "Whenever the executive authority of "any State or territory demands any person "as a fugitive from justice, of the executive "authority of any State or Territory to "which such person has fled, and produces "a copy of an indictment found, or an affi- "davit made before a magistrate of any "State or Territory, *charging the person de- "manded* with having committed treason, "felony or other crime," &c.

Upon the removal complaints presented to him and without any evidence that the defendant Haas was wanted in the District of Columbia, the Commissioner issued two warrants and the defendant was arrested (fols. 242-272).

The proceeding before the Commissioner for removal to the District of Columbia was instituted by the filing of these removal complaints on the 24th day of June, 1908. At the hearing before the Commissioner on November 7, 1908, counsel for the government made the following offer:

> "Mr. Dorr: I offer in evidence four au- "thenticated copies of bench warrants is- "sued for Moses Haas under indictments "26086, 26087, 26088 and 26089, outstanding "in the Supreme Court of the District of "Columbia, and I ask that they be marked "Government Exhibit 5," (fol. 374).

Counsel for the defendant objected to the receipt of these bench warrants upon the ground that they were not identified with the proceeding

then pending before the Commissioner; and, further, that it does not appear which of the warrants was issued in the proceeding in which testimony is now being taken, and there should not be offered in evidence more than one bench warrant in one removal proceeding. They were also objected to as incompetent and immaterial in that the bench warrants were not mentioned in the removal complaints and the removal is not based upon the issuance of any bench warrants, but the removal is based solely upon the affidavits and complaints of Goldthwaite H. Dorr, which are based upon information and belief, and which complaints refer to the indictments, but do not refer to the issuance of any bench warrants; nor does it appear in this proceeding that any bench warrants were ever issued, which is a jurisdictional defect, and deprives this Court of any jurisdiction, or of any power to remove or to commit the defendants for removal; that proceedings cannot be initiated solely upon the affidavit of the District Attorney, but his information must be supplemented by the statement of the fact that bench warrants were in fact issued, and that upon the bench warrants, that is, upon the demand of the Washington jurisdiction, this Court alone gets jurisdiction to remove. There is therefore nothing definite to show that the Washington jurisdiction demands the presence of the defendant Haas.

The Commissioner subsequently overruled the objection and received the bench warrants, which we submit was error.

The Court will observe that the removal proceedings were instituted before the Commissioner

on June 24, 1908; whereas the bench warrants, as offered in evidence by the government, were issued by the District Court of the District of Columbia on the 2nd of November, 1908, in other words, the fact that the bench warrants were issued on November 2, 1908, from the District of Columbia, and that no other bench warrants were before the Commissioner, shows that the defendant Haas was not wanted in the District of Columbia at the time that the removal complaints were filed before the Commissioner on June 24, 1908.

The photographic exhibits in the Price Record also show from the minutes of the Court that the bench warrants were not issued until November second.

Section 1014 of the Revised Statutes requires the proceedings before the Commissioner to be

> "Agreeably to the usual mode of process
> "against offenders in such State;"

and it has been held that it was the intention of Congress in this provision to assimilate all the proceedings for holding accused persons to answer before a Court of the United States to the proceedings had for similar purposes by the laws of the State where the proceedings should take place.

United States v. Martin, 17 Fed. Rep., 150.
United States v. Tureaud, 20 Fed. Rep., 621.
Marvin v. United States, 44 Fed Rep., 405.
In re Gourdin, 45 Fed. Rep., 842.
United States v. Sauer, 73 Fed. Rep., 671.

United States v. Sapinkow, 90 Fed. Rep., 654.
United States v. Rundlett, 2 Curtis (U. S.), 41.
United States v. Horton, 2 Dill. (U. S.), 94.
Ex parte Burford, 3 Cranch., 448.
United States v. Burr, 2 Whel. Crim. (N. Y.), 573.
United States v. Insley, 54 Fed. Rep., 223.
In re Dana, 68 Fed. Rep., 895.
United States v. Collins, 79 Fed. Rep., 65.
In re Price, 83 Fed. Rep., 830.
United States v. Price, 84 Fed. Rep., 636.
Johnson v. United States, 87 Fed. Rep., 187.
People v. Cramer, 22 App. Div., 189.
McKelvey v. Marsh, 63 App. Div., 396.
Comfort v. Fulton, 13 Abb. Pr., 276.
Blodgett v. Race, 18 Hun, 132.
Tracy v. Seamens, 7 N. Y., 146.

That the proceedings before the Commissioner should have conformed to similar practice before a magistrate in the State of New York is held by Judge Lacombe in re Price, 83 Fed. Rep., 830, where he wrote:

> "A person arrested in any State on a "bench warrant issued by the Supreme "Court of the District of Columbia, on an "indictment there found, can only be re "moved to that district for trial by proceed "ings under Revised Statutes, Section 1014, "which require an examination in accord "ance with the practice of the State where "the arrest is made."

It is very clear from the foregoing authorities and others which might be cited, that the proceedings before the Commissioner should have

conformed to the usual mode of process against offenders in New York State.

The Code of Criminal Procedure of the State of New York requires the issuance of a bench warrant for the arrest of one indicted for crime. Section 299 of the Code of Criminal Procedure provides as follows:

> "If the defendant has been discharged "on bail, or has deposited money instead "thereof, and no not appear to be arraigned, "or if the defendant be for any cause ab "sent when his personal attendance is neces- "sary, the Court, in addition to the forfeit "ure of any undertaking or bail, or of any "money deposited, may direct the clerk to "issue a bench warrant for his arrest."

And Section 300 provides:

> "The clerk, on the application of the Dis- "trict Attorney, may accordingly at any "time after the order, whether the Court be "sitting or not, issue a bench warrant to one "or more counties. A bench warrant for the "arrest of any defendant indicted may also "be issued by the District Attorney at any "time after the indictment is found."

The form of bench warrant to be issued upon an indictment is prescribed by Sections 301 and 302 of the New York Code of Criminal Procedure. Section 827 of the same Code, which relates to the extradition of persons accused of crime, requires a demand and requisition from the jurisdiction requiring the person of the defendant. In Matter of Solomans, 1 Abb. Pr., N. S., 347, it is held that to authorize the surrender of a fugitive from justice, there must be a demand by the ex

ecutive of the State from which he fled, and a copy of the affidavit or indictment charging the offense must be produced, certified by said executive as authentic.

In Matter of Rutter, 7 Abb. Pr., N. S., 67, it is held that a requisition from the Governor of another State upon the executive of this State (N. Y.) is no warrant for the arrest of the alleged fugitive, and that in the absence of other authority a person so held will be discharged on habeas corpus.

Therefore, the law of the State of New York requires the issuance of a bench warrant for the arrest of one indicted, and also for the arrest of one sought to be extradited to another jurisdiction.

The "usual mode of process" in the State of New York was wholly lacking in the proceedings before the United States Commissioner in this case. Counsel for the Government evidently appreciated this jurisdictional defect and sought to supply it by causing bench warrants to be issued from the District of Columbia on the 2nd day of November, 1908, and of subsequently offering them in evidence before the Commissioner, but this was not sufficient. Criminal proceedings can not be amended in this way, and if the defendant Haas was not wanted in the District of Columbia at the time of his arrest upon the warrant of the Commissioner he was entitled to be discharged.

The precise point that an amendment of criminal process should not be allowed was decided in

United States v. Tureaud, 20 Fed. Rep., 621, where it was held that an amendment will not be allowed of an insufficient affidavit to an information, and that if a party makes application on insufficient materials he cannot afterwards be allowed to supply the deficiency.

In cases in the United States Courts, bench warrants have always been required.

In Greene v. Henkel, 183 U. S., 249, a preliminary complaint before the magistrate was based upon information contained in an indictment found by a grand jury of the United States District Court for the Southern District of Georgia, and the distinct allegation was made that bench warrants had been issued for the arrest of the defendants; a certified copy of the indictment was attached and made a part of the complaint.

In Beavers v. Henkel, 194 U. S., 73, a warrant for the arrest of the defendant was issued to the Marshal of the district where the indictment was filed, and the same was returned "not found"; thereupon a complaint, supported by affidavit, was filed in the District Court of the United States for the Southern District of New York, alleging the filing of the indictment, the issue of the warrant, the return "not found," and that Beavers was within the Southern District of New York. Upon this complaint a warrant was issued, Beavers was arrested and brought before the by the Commissioner.

The Beavers-Benson cases, supra, indicate conclusively the practice to be that a bench warrant must issue as a preliminary to the warrant issued by the Commissioner.

In Beavers vs. Haubert, 198 U. S., 77, a bench warrant was also issued.

The absence of bench warrants or of any proof by affidavit or otherwise, that the defendant Haas was wanted in the District of Columbia, wholly deprived the Commissioner of jurisdiction to issue warrants for his arrest. The whole proceedings were fundamentally defective and the defendant was entitled to be discharged upon his motion.

In Interstate rendition, it is required by the Constitution that a demand shall be shown; the provision of Article 4 of the Constitution being:

> "A person charged in any State with treason, felony and other crime, who shall flee "from justice and be found in any State, "*shall, on demand of the executive author*"*ity of the State from which* he fled, be de"livered up for removal to the State having "jurisdiction of the crime."

In United States v. Price, 84 Fed. Rep., 636, the practice in the Southern District of New York is thus stated by Judge Brown:

> "I do not think it is proper, and in this "district for a considerable time at least it "has not been the practice, to remove a pris"oner for trial under Section 1014 to a dis"tant district except upon the production "at the time the application for removal is "made, if not before, of a copy of the in"dictment or information or complaint "showing the criminal proceedings are "pending *and that he is wanted for trial in* "*the district to which his removal is sought*, "and also that such proceedings are for the

"same offense on which he has been com-
"mitted by the Commissioner."

Furthermore, the removal complaints did not show that Mr. Dorr was authorized to bring the proceedings and, therefore, in the absence of a bench warrant, did not confer jurisdiction upon the Commissioner.

In re Ferrelle, 28 Fed. Rep., 878.
In re Herris, 32 Fed. Rep., 583.

Tested by the rules herein stated, the removal complaints before Commissioner Shields did not confer jurisdiction upon him to issue warrants for the arrest of the defendant, or to subsequently commit him for removal to the District of Columbia.

XII.

The crimes and offenses attempted to be alleged in the Washington and New York indictments of 1908 were all barred by the Statute of Limitations.

The defendant introduced in evidence before the Commissioner in this proceeding the three indictments found against him in the District of Columbia in the year 1905 (fols. 456-483-510-579). These three indictments were against Edwin S. Holmes, Junior, Frederick A. Peckham and Moses Haas, and all charged conspiracy to violate Section 5440 R. S. U. S., as amended. They were found in the District of Columbia on the 22nd day of August, 1905, and charged, in substance, that on June 2, 1904, the defendants un-

lawfully conspired to defraud the United States by means of the dishonest scheme set forth in the indictments, which contemplated that Holmes, in violation of his duty as Associate Statistician, etc., should divulge the contents of the reports upon the cotton crop in advance of their publication, upon which information the parties would speculate, the profits to be divided in certain proportions (fols. 459-461; 546-549). Also that on the 2nd day of June, 1904, the defendants conspired to commit an offense against the United States, that is, the offense of misconduct in office on the part of Holmes, by which he was to give out information in advance, etc., (fols. 487-489; 518-519).

In all of those three Washington indictments of 1905, the several conspiracies were charged to have been entered into on the 2nd day of June, 1904, *and it was specifically alleged that the object of the conspiracy concerned and included the cotton crop report of the month of June*, 1905, (fols 458-459; 460-461; 486-487-488; 515-516-518-519; 544-545-546-547).

These indictments also contain averments that the reports upon the cotton crop were to be issued " on or about the third day of each of the " months of June, July, August, September, Oc- " tober and December in each year," (fol. 459). There are then averments that the act of Holmes in violation of his duty should be committed " some time in advance of the official issuance and " publication of *each* of such cotton crop reports," (fols. 460-461), and there are further allegations that Holmes held and occupied the office of Associate Statistician from the 16th day of November, 1903, until the 9th day of June, 1905, (fols. 459-460). There is thus in all three of these

Washington indictments of 1905 distinct averments including the cotton crop report of June, 1905, within the object of the conspiracies.

All of the New York and Washington indictments of 1908 relate only to the cotton crop report of June, 1905. It must, therefore, be conceded upon the argument, that all of the eleven indictments, the three found in Washington in 1905, the four found in Washington in 1908, and the four found in New York in 1908, relate to and include the cotton report to be issued in the month of June, 1905.

As the conspiracies set forth in the Washington indictments of 1905 give the date when the conspiracies were entered into as June 2, 1904, and the first overt act as August 6, 1904, it follows that the conspiracies alleged in the 1905 indictments *which included the cotton crop report of June*, 1905, were barred by the statute of limitations on the 6th day of August, 1907, or about nine months before the 1908 indictments were found.

The overt acts alleged in the 1905 indictments run from August 6, 1904, to and including December 31, 1904.

In the month of June, 1907, Edwin S. Holmes, Junior, was placed on trial in the District of Columbia under the indictments of 1905, and, after an extended trial, the jury disagreed. In that case the Government placed almost entire reliance upon the testimony of Lewis C. Van Riper, an alleged conspirator, who turned "State's evidence" and was not included in the indictments found by the grand jury. The testimony of Mr. Van Riper bears so fully upon the question of the time of the formation of the alleged conspiracies that it was introduced in evidence before the

Commissioner in this proceeding and is printed in the record on this appeal as folios 30-226. Mr. Van Riper was examined, cross-examined and re-examined, and it is established by his testimony that the conspiracy to affect the crop report of June, 1905, was entered into in August, 1904. We quote from Mr. Van Riper's testimony as follows:

"Q. Now I want to have you take up
"each of the months when you say this
"agreement about making profits and divid-
"ing with Haas and Peckham was in force.
"I want to know to what extent, if at all,
"the operations which you entered into were
"affected by the disclosures or alleged dis-
"closures made by Mr. Holmes as to what
"the reports would be. You say the ar-
"rangement was made in August, 1904?
"A. Yes, sir.
"There are four months then we would
"have to consider so far as cotton is con-
"cerned; that is, September, October and
"December, 1904, *and June*, 1905?
"That is correct."

(See testimony of Van Riper on page 144 of Record.)

Van Riper further testified that he first met Holmes in the month of August, 1904, (fols. 31-32), and that the arrangement as to Holmes giving out advance information, speculation and division of profits was then entered into. He testified:

"Q. Now about this first meeting that
"you had with Mr. Holmes, which I think
"you said was on the 7th of August, 1904;
"is that right?
"A. Yes, sir.
"Q. What division do you say was then
"agreed upon?
"A. I agreed to give Peckham two-thirds
"of the profits."
(Fol. 149).

And again:

"Q. What was said about Haas and "Holmes?

"A. Haas' name at that time had never "been mentioned although they told me that "there was a party that carried the infor- "mation back and forth to Price.

"Q. Well, Mr. Holmes was there?

"A. Yes, sir.

"Q. Was anything said or intimated as "to whether or not he was to have any ben- "efit from this arrangement—pecuniary "benefit?

"A. No, sir.

"Q. So that so far as you were able to "tell us, that whole two-thirds was to go to "Peckham and be his?

"A. Yes, sir.

"Q. Was there anything that took place "to affect that matter in your knowledge "until the 11th of December following?

"A. Yes, sir.

"Q. What was it?

"A. Bring Haas into it.

"Q. I beg pardon?

"A. Introducing Haas to me.

"Q. When was it that that happened? I "have forgotten the date.

"A. It was about October; somewheres "early in October.

"Q. And that was at the New Willard?

"A. Yes, sir.

"Q. You were all four there then?

"A. Yes, sir.

"Q. What was said then about dividing "profits?

"A. I agreed to give Haas three quar- "ters.

"Q. You agreed to give Haas three-quar- "ters?

"A. Yes, sir.

"Q. And you would keep the other quar- "ter?

"A. I would give Peckham a quarter, and "I was—I mean, excuse me, to give Haas

"half, Peckham a quarter and retain one
"quarter myself.
"Q. What about Holmes?
"A. Mr. Haas was the only one consid-
"ered; Mr. Holmes was not.
"Q. I beg pardon?
"A. Mr. Haas got half, and Peckham a
"quarter, and myself a quarter.
"Q. I am asking you what about
"Holmes?
"A. I don't know.
"Q. Well, I say, was anything said or in-
"timated?
"A. No, sir.
"Q. (Continuing) At that time, about
"Holmes getting any of it?
"A. No, sir.
"Q. So that so far as you have any
"knowledge or direct intimation, there was
"no understanding that he was to get any
"part of that?
"A. No, sir.
"Q. I ask you when you were first in-
"formed that Mr. Holmes expected to par-
"ticipate in the profits of these speculations?
"A. When I saw Haas pay him money
"was the first I had positive knowledge of
"it.
"Q. That was on the 11th or 12th of De-
"cember?
"A. Yes, sir."

(See testimony of Van Riper, fols. 149-150).

It is clear then from a reading of the testimony of Van Riper that if any conspiracy existed at all with relation to the report of June, 1905, that it was formed and entered into in the year 1904, so that the acts of May 31, 1905, now alleged in the indictments as separate conspiracies, were mere overt acts of the original conspiracy. As to the formation of the conspiracy, the government relied upon this testimony of Van Riper and no

where in this testimony can it be found that the conspiracy was entered into on the 31st day of May, 1905. The testimony of Van Riper shows that overt acts were committed on that day, but not that separate and distinct conspiracies were entered into. It also shows that the original conspiracy contemplated the crop report of June 1905, so that all of the acts of the parties after that time were overt acts of the original conspiracy. The gist of the crime being the conspiracy and the bar of the statute of limitations applying after the commission of the first overt act, it follows that the statute, applied to the testimony of Van Riper, shows that the statute of limitations became a bar in the month of August, 1907. These indictments were found on May 29, 1908.

In re Snow, 120 U. S., 282, this Court said:

> "A grand jury cannot divide a single, "continuous offense, running through a past "period of time into such parts as it may "please and call each part a separate of- "fense"

Many of the counts of the 1908 indictments, as will hereafter be alluded to when said indictments are analyzed, charge the object of the conspiracies to have been to induce Holmes to give out advance information; also to endeavor to induce Holmes to commit the alleged crime of misconduct in office. These specific conspiracies and specific offenses were named and included in the three Washington indictments of 1905, and are binding upon the government, showing beyond question the date when the alleged conspiracies were entered into.

It is important to determine at the outset when a conspiracy to commit an offense or to defraud the United States under Section 5440 of the Re-

vised Statutes is a completed offense. The authorities upon this proposition have been carefully examined, disclosing that the courts have differed substantially in their conclusions. The latest expression upon the subject is to be found in the decision of Judge Holt in the Southern District of New York, sustaining the pleas of the defendants Kessel and Harned and dismissing the indictments as to them in the case of The United States of America v. Kessel and Harned impleaded with the American Sugar Refining Company and others, (not yet reported). In this case Judge Holt, discussing the lack of harmony to be found in the decisions with reference to the application of the bar of the statute of limitations to an indictment for conspiracy under Section 5440, writes as follows:

> " Some authorities hold that the statute of " limitations begins to run in such prosecu- " tions as soon as one overt act has been " committed, and, that, if more acts in fur- " therance of the conspiracy are performed, " that does not stop the running of the stat- " ute. (United States v. Owen, 32 Fed. 534; " United States v. McCord, 72 Fed. 159; " Ex Parte Black, 147 Fed. 832; United " States v. Biggs, 157 Fed. 264.) Other cases " hold, in substance, that each additional " overt act starts the statute running anew. " (United States v. Bradford, 149 Fed. 413; " Ware v. United States, 154 Fed. 577; " United States v. Brace, 149 Fed. 874.)
>
> " In Ware v. United States (154 Fed. 577), " it is held that there cannot be a conviction " upon the original conspiracy and overt acts " which have taken place more than three " years before the finding of the indictment; " that there must be proved a conspiracy " within the three years, as well as an overt " act, and that, although the original con- " spiracy is competent evidence upon the

" question whether a new or continuing con-
" spiracy has been entered into within the
" three years, it alone is insufficient to prove
" such new conspiracy. See also United
" States v. Black, 160 Fed., 431.

" These decisions were all made in other
" districts. With entire respect for the
" Judges making them, it is impossible to
" harmonize them. In my opinion, the cases
" which hold that the statute begins to run
" after the first overt act, and is not stopped
" by subsequent overt acts in pursuance of
" the same conspiracy, take the correct view.

" But in any event the decisions under
" Section 5440 of the United States Revised
" Statutes are not strictly applicable to this
" prosecution. The word conspiracy is usu
" ally employed with a sinister meaning, but,
" in my opinion, as used in the Sherman Act,
" it has substantially the same meaning as
" the word contract. A conspiracy in re
" straint of trade is nothing but a contract
" or agreement between two or more persons
" in restraint of trade. If this indictment
" had charged, in the language of the act,
" that the defendants had made a contract
" in restraint of trade, I suppose no one
" would claim that the statute of limitations
" did not begin to run upon the execution of
" the contract. How can the Government
" impose a different liability on the defend-
" ants by calling the same thing a conspir-
" acy? I think that the offense was com
" plete in this case when the contract be-
" tween Kissel and Segal was made. It was
" unquestionably complete before January
" 5, 1904, before which date the contract was
" carried out in all respects, and the object
" of the alleged conspiracy accomplished. If,
" however, the doctrine of that class of cases
" which hold that each new overt act consti-
" tutes a new offense, in prosecutions under
" Section 5440, were to be followed in this
" case, the overt acts alleged to have occur
" red within three years, necessary to consti
" tute a new offense, must be acts which

" have a tendency to carry out the object of " the conspiracy, or in some way tend to " make it effectual (United States v. Mc- " Laughlin, 169 Fed. 307; United States v. " Black, 160 Fed. 431); and each defendant " must have participated intentionally in an " overt act done within the three years prior " to the indictment (Ware v. United States, " 154 Fed. 579). So far as the defendant " Harned is concerned, he had nothing to do " with any overt act alleged in the indict- " ment after December 30, 1903. As to the " defendant Kissel, the overt acts alleged in " the indictment as occurring within three " years before it was filed, in my opinion, are " not acts which had any tendency to carry " out the object of the conspiracy, or to make " it effectual. The overt acts so alleged are " certain resolutions adopted by the direc- " tors of the American Sugar Refining Com- " pany, agreeing to indemnify the president " and counsel for any liability in the Segal " matter, certain letters written by one of " the defendants to the secretary of the " American Sugar Refining Company, and " a bill for disbursements rendered by the " defendant Kissel to the American Sugar " Refining Company, all in the year 1907. In " my opinion these alleged overt acts had no " tendency to accomplish the object of the " conspiracy. The object was completely ac- " complished before January 5, 1904. One " of the letters, dated February 15, 1907, al- " leged in the indictments as an overt act, " shows that the question whether criminal " proceedings should be brought had been " under consideration by the Department of " Justice before that time, but it took no ac- " tion until this indictment was filed.

" The case of United States v. Irvine (98 " U. S., 450), although that was not a prose- " cution for a conspiracy, seems to me to " state the principle applicable to such a " case better than any other authority that " has been cited. In that case, an indict- " ment was found for a violation of the act

" making it a misdemeanor for a pension
" agent to wrongfully withhold from a pen-
" sioner the whole or any part of the pension
" due to him. The indictment was brought
" more than three years after the pension
" money had been received by the pension
" agent, and demanded from him by the pen-
" sioner. The Trial Court held that the of-
" fense prohibited by the statute was a con-
" tinuing offense, and that so long as the de-
" fendant continued to withhold the pension
" money the offense was not barred by the
" statute of limitations. The Supreme Court
" overruled that decision. Mr. Justice Mil-
" ler, in the opinion, says:

" ' There is in this but one offense. When
" ' it is committed, the party is guilty and
" ' is subject to criminal prosecution, and
" ' from that time, also, the Statute of Limi-
" ' tations applicable to the offense begins
" ' to run. It is unreasonable to hold that
" ' twenty years after this he can be indict-
" ' ed for wrongfully withholding the money,
" ' and be put to prove his innocence after
" ' his receipt is lost, and when perhaps the
" ' pensioner is dead. * * * He pleads the
" ' statute, * * * which was made for
" ' such a case as this; but the reply is, You
" ' received the money. You have continued
" ' to withhold it these twenty years; every
" ' year, every month, every day, was a
" ' withholding, within the meaning of the
" ' statute.

" ' We do not so construe the act. When-
" ' ever the act or series of acts necessary to
" ' constitute a criminal withholding of the
" ' money have transpired the crime is com-
" ' plete, and from that day the Statute of
" ' Limitations begins to run against the
" ' prosecution.'

" There seems to be an increasing tendency
" in recent years for public prosecutors to
" indict for conspiracies when crimes have
" been committed. A conspiracy to commit

" a crime may be a sufficiently serious of-
" fense to be properly punished; but when a
" crime has been actually committed by two
" or more persons, there is usually no proper
" reason why they should be indicted for the
" agreement to commit the crime instead of
" for the crime itself. A large class of fed-
" eral prosecutions for commercial offenses,
" such, for instance, as violation of the inter-
" state commerce act, the Sherman act, the
" Bankrupt act, the acts relating to publi-
" lands, and many others, now habitually
" take the form of indictments for conspira-
" cies to commit crimes, the actual commis-
" sion of which is also usually alleged in the
" indictment. Prosecutors seem to think
" that by this practice all statutes of limita-
" tions and many of the rules of evidence es-
" tablished for the protection of persons
" charged with crime can be disregarded.
" But there is no mysterious potency in the
" word conspiracy. If a conspiracy to com-
" mit a crime has been carried out, and the
" crime committed, the crime, in my opinion,
" cannot be made something else by being
" called a conspiracy. The men who have
" committed the crime are liable to what-
" ever penalties the law imposes, and to
" whatever protection the law affords. If
" the statute of limitations is a bar to a pros-
" ecution for the crime, that bar, in my opin-
" ion, cannot be lifted by a prosecution for
" a conspiracy to commit that crime. Stat-
" utes of limitations are beneficial statutes.
" The interest of the community and justice
" to persons charged with crime require that
" offenses be promptly prosecuted. Statutes
" of limitations should be given a plain and
" sensible construction. Their effect should
" not be frittered away by a strained inter
" pretation based on subtle and refined rea
" soning. The Government has waited, be-
" fore bringing this prosecution, for five
" years and a half after the alleged offense
" was complete, and, in my opinion, the stat-
" ute of limitations is a bar to this indict
" ment."

We have quoted liberally from this opinion because it has not yet been officially reported and has only recently been handed down. It has been uniformly held that the conspiracy is the gist of the offense, but that prosecution will not lie for the conspiracy until the commission of an overt act, which, as stated in United States v. Britton, 108 U. S., 199, and so often quoted:

> "Merely affords a *locus penitentiae* so that
> "before the act done either one or all of the
> "parties may abandon their design and thus
> "avoid the penalty prescribed the statute."

The offense of conspiracy therefore becomes a completed offense, and an indictment can be found therefor as soon as an overt act has been committed. The perpetration of an unlawful overt act converts what might never have had life into a crime subject to indictment at that time.

In the case at bar, the 1905 indictments allege the conspiracies to procure Holmes to give out information in advance and to commit the crime of mis-conduct in office to have been entered into on June 2, 1904, and the cotton crop reports to have been affected by these conspiracies are specifically stated to include the report of the month of June, 1905. Can the government now be permitted with these 1905 indictments outstanding—to charge that possible overt acts of the month of May, 1905, were in themselves separate and distinct conspiracies and therefore substantive offenses? Answer to this argument will undoubtedly be made by the Government, as it was upon the argument below, that conspiracy is a continuing offense, but in none of the Washington indictments of 1908, with the exception of the sec

ond, fifth and sixth counts of indictment No. 26,088, are the conspiracies alleged as continuous offenses. In all of the other 1908 indictments and in all of the counts thereof the specific date of the conspiracies is given as May 31, 1905. Furthermore, reference to the second, fifth and sixth counts of indictments No. 26,088, found in 1908, shows that the overt acts are alleged to have been committed between November 20, 1904, and December 3, 1904, *which thus includes the same overt acts as are charged in the* 1905 *Washington indictments.*

A careful reading of the three indictments of 1905 and of the eight indictments of 1908 will show that they in substance refer to one and the same thing, particularly wherein they charge a conspiracy to defraud the United States, and an intent to procure Holmes to give out information in advance and to induce him to commit the alleged crime of misconduct in office. If these offenses became completed offenses on August 6, 1904, and were then the subject of indictment, the bar of the statute of limitations became operative on August 6 or 7, 1907, and the 1908 indictments were all outlawed.

The Government has sought to evade this question of the bar of the statute of limitations by averring possible overt acts of the month of May, 1905, as separate and distinct offenses. That they were not so is apparent from a reading of the indictments themselves, which view is further conclusively established by a reading of the testimony of Holmes (fols. 14-193 of Record), extracts from which have been hereinbefore referred to.

That a conspiracy formed under Section 5440 of the Revised Statutes is a completed crime when

an overt act has been committed to effect the object of the conspiracy, is held in the following cases:

United States v. Irvine, 98 U. S., 450.
Pettibone v. United States, 148 U. S., 97.
Dealy v. United States, 152 U. S., 539.
United States v. Owen, 32 Fed. Rep., 534.
United States v. Lancaster, 44 Fed. Rep., 896.
United States v. McCord, 72 Fed. Rep., 159.
Berkowitz v. United States, 93 Fed. Rep., 452.
United States v. Green, 100 Fed. Rep., 941.
United States v. Biggs, 157 Fed. Rep., 264.
United States v. Black, 160 Fed. Rep., 431.

Other cases holding that conspiracy under Section 5440 is a continuing offense, so that a prosecution is not barred by the statute of limitations until three years after the performance of the last overt act, are:

United States v. Bradford, 148 Fed. Rep., 413, but in this case Judge Parlange was careful to say:

> " It is plain then that the statute of limi-
> " tations is not set in motion by the forming
> " of a conspiracy, but that the moment the
> " conspiracy is formed and the overt act is
> " committed by one of the conspirators to
> " effect the purpose of the conspiracy, that
> " moment the offense can be prosecuted and
> " the statute of limitations begins to run
> " *as regards that conspiracy and that particu-*
> " *lar overt act.* (See Opinion, page 417).

Jones v. United States, 162 Fed. Rep., 417.

wherein it was held in substance that if the conspiracy contemplated various overt acts and the consequent continuance of the conspiracy beyond the commission of the first one, then each overt act gave a new, separate and distinct effect to the conspiracy and constituted another crime.

In the case at bar the indictments of 1905 clearly charge an intent to commit overt acts with reference to the reports of the months of June, July, August, September, October and December. Each act of Holmes in divulging the information in advance, concerning the condition of the cotton crop report for these months, would be an overt act, although there was but one original conspiracy. Can it be said, within the reasoning of the Jones case, supra, that the defendants were each subject to six separate and distinct indictments? The statute does not make the overt act a crime, nor is there anything in the statute constituting an overt act a renewal of the original conspiracy. The statute makes the conspiracy the offense and the cases have so held. If the conspiracy is the offense and it becomes complete upon the performance of the first overt act and the defendants are then at that time subject to indictment, the bar of the statute of limitations must apply after the lapse of three years from the commission of that overt act. To hold otherwise is to read into the statute (Section 5440) elements as to the renewal or continuance of a conspiracy which are not therein expressed.

Ware v. United States, 154 Fed. Rep., 577.

United States v. Lonabough, 158 Fed. Rep., 314.

In the Biggs case, 157 Fed. Rep., 264, the Court held that an indictment under Revised Statutes, Section 5440, for a conspiracy to defraud the United States which sets out a number of overt acts on different dates, is either bad for duplicity—as charging more than one conspiracy, or, if held to charge a single continuing conspiracy, that the offense was consummated when the first overt act was committed and from that date the statute of limitations began to run. This case was appealed to this Court and affirmed in United States v. Biggs, 211 U. S., 507, but this Court did not pass upon the question of the statute of limitations, holding that as the case was decided on the broad ground that the Government could not prosecute the case, it was not necessary for this Court to decide the other questions involved, and that the same thereby became irrelevant.

In the case at bar, as in the Biggs case, the indictments allege a number of overt acts to have been committed on different dates, running from May 21, 1905, to May 25, 1908, in some of the indictments; and from November 20, 1904, to June 2, 1905, in certain counts of other indictments. The pleader has not charged that these conspiracies were continuing offenses with the exception, as hereinbefore noted, of the second, fifth and sixth counts of indictment No. 26,088. In the other charging portions of the indictments the conspiracies are alleged to have been entered into on May 31, 1905, and then various overt acts are stated to have been performed to effect the object of the conspiracies. If it is true, as stated in some of the cases cited above, that conspiracy is a continuing offense and that each overt act constitutes a renewal thereof, then it must be like-

wise true, following the argument to a logical conclusion, that each overt act constitutes a distinct and separate offense, in which case each of the indictments here would be bad for duplicity as charging more than one conspiracy.

Had the pleader in the case at bar averred the formation of the conspiracy and that it was intended to be continuous and to include acts to be performed on different dates, then possibly a different conclusion might be arrived at; but he charges a specific date when the conspiracy was entered into and that the numerous overt acts were performed in accordance therewith; this is so both in the indictments of 1905 and 1908.

In Armour Packing Company v. United States, 209 U. S., 56, this Court held that the charge of a single continuous carriage from Kansas City to New York at a concession from the legal rate for the part of the carriage from the Mississippi River to New York of twelve cents for each hundred pounds transported, constituted a single continuing offense, but not a series of offenses, although the act was continuously committed in each district through which the transportation at the prohibited rate was received. (See opinion, pp. 74, 75, 76, 77). This Court held in substance that the crime (violation of the Elkins Act) was being constantly committed during the entire time that the transportation was being carried on, but added:

> "It does not follow from this view of the "character of the offense that a single "transportation of goods can be made the "basis of repeated separate criminal charges "in each of the districts through which the "transportation at an illegal rate is had."

The transportation, therefore, although continuous and extending over a period of time, was held to constitute one offense.

If conspiracy is held to be a continuous crime, within the doctrine of some of the cases cited above, so that an indictment can be had at any time within the statutory period of three years after the date of the last overt act, and if it be conceded that each overt act operates as a renewal of the conspiracy, then manifestly each overt act so relates back to the date of the inception of the conspiracy that a separate and distinct crime is completed at each time that an overt act is committed. Following this argument to its conclusion, we have it that an indictment which charges one act of conspiracy and several overt acts, charges several separate and distinct crimes and is, therefore, bad for duplicity; but this will be considered in another point.

In the Armour Packing Company case, supra, this Court considered Palliser's case, 136 U. S., 257-265, wherein a person was prosecuted in Connecticut for mailing a letter in New York addressed to a postmaster in the former State, and wherein this Court held:

> "There can be no doubt at all if any of-
> "fense was committed in New York the of-
> "fense was continuing to be committed when
> "the letter reached the postmaster in Con-
> "necticut."

Conspiracy is a substantive offense and is not the character of crime which can be continued through several jurisdictions; there must come a time when the offense is complete, and that is when an overt act has been committed in pursu

ance of the unlawful agreement. This overt act, as this Court has held, may even be committed in a foreign jurisdiction and the conspirators may be indicted at any time within three years from the time of the commission of the original overt act.

Again, if each overt act so renews the original conspiracy that the substantive offense of conspiracy is committed and repeated every time that an overt act is perpetrated, can it be the law that separate punishment can be lawfully inflicted for every overt act? Assume for the sake of the argument that alleged conspirators have been convicted and punished with regard to an original overt act—can they also be convicted and punished for the subsequent overt acts upon the ground that thereby the original conspiracy is renewed? If this is so, then one who was a party to an original conspiracy and the first overt act committed under it, but subsequently had nothing to do with the conspiracy, could be indicted and punished if one of his fellow-conspirators committed an overt act in pursuance of the original conspiracy even after the lapse of years.

There is no practical difference in the case at bar between the indictments of 1905 and those of 1908; the same fraudulent scheme is alleged in each as a basis of criminality. We submit that the conspiracy was the gist of the offense; that it was entered into, if at all, as stated in the 1905 indictments, on June 2, 1904. That the first overt act under it is alleged to have been performed on August 6, 1904, for which reason Section 1044 of the Revised Statutes (R. S., Section 1044) is applicable to this case. The general Statute of Limitations (R. S., Sec. 1044) is applicable to the District of Columbia.

U. S. v. Callan, 197 U. S., 477.

The doctrine of the Ware case, 154 Fed. Rep., 577, which is perhaps the strongest case for the Government upon this point, makes all of the acts constituting a conspiracy and all of the overt acts charged in the three original indictments of 1905 immune from further indictment on account of the statute of limitations, because the Government averred the original conspiracies to have been entered into on the second day of June, 1904, from which it follows that *all of the acts of May* 31, 1905, *which were to illegally affect the crop report of June*, 1905, *were included in the three original indictments.*

Under the ruling in the Ware case, supra, the only possible way in which the subsequent overt acts could be made the subject of separate indictments would be by an averment in the indictments that the acts of May 31, 1905, were based upon the original conspiracy of June 2, 1904, and were entered into by the defendants "with conscious "participation," which allegation is not contained in any of the 1908 indictments.

While it has been held by this Court that the sending of a letter to accomplish an illegal act is a continuing crime from the time that the letter is mailed until it is delivered, and also that the transportation of goods contrary to the provisions of the Interstate Commerce Act, is a continuing crime from the time that the goods are shipped until delivered or received, still we find no case in this Court holding that the substantive crime of conspiracy is such a continuing crime that it can be held to have life and force from the date that the conspiracy is entered into until the completion of the last overt act.

The original 1905 indictments charge that the

intended conspirators were to procure the advance information every time a report upon the cotton crop was issued "in each year." There was no time limit stated in the original indictments; the charge of conspiracy was broad and comprehensive; it extended to and included all of the reports upon the cotton crop to be issued six times "in each year"; the conspiracy was not limited to a single crop report nor was it limited to a single or definite period of time. For all that appears to the contrary in the 1905 indictments the conspiracies there alleged are still in full force and effect. In the 1908 indictments there is no charge or averment that the defendants with knowledge of the original conspiracy of June 2, 1904, entered into a renewal of the conspiracy "with conscious participation," etc.

See also:

United States v. Hirsch, 100 U. S., 33.
United States v. Britton, 108 U. S., 199.
In Re Snow, 120 U. S., 282.
Dealy v. United States, 152 U. S., 539.
Williamson v. United States, 207 U. S., 425.

In the Williamson case, supra, Mr. Justice White remarked: "The conspiracy is the gist of the crime."

The conspiracies alleged in the eight indictments of 1908 are in effect the same conspiracies charged in the old indictments to have been formed on June 2, 1904. The same conspiracy could not be entered into on different dates, and at the time the three previous indictments were found, to-wit: August 22, 1905, the object of the conspiracies had been completed inasmuch as all of the indictments averred that Holmes did not

hold the office of Associate Statistician after the 9th day of June, 1905, and there was no crop report to be made immediately after June, 1905. The Government has thus selected and named the date when the conspiracy was formed, to-wit. June 2, 1904, and the acts of May 31, 1905, alleged in the last indictments of 1908, even if given full weight, can be nothing more than overt acts of the original conspiracy. For the reasons aforesaid the defendant should have been discharged, as the 1908 indictments returned against him are barred by the statute of limitations, and he should not be put to the expense of being removed to Washington for trial upon indictments which are void.

These 1905 indictments were introduced in evidence before the Commissioner and it was obvious to him upon a mere reading of the eight indictments of 1908 that the allegations of intent to defraud the United States and to commit an offense against the United States in inducing Holmes to commit the crime of misconduct in office, were all included in them. The date of the conspiracies being thus distinctly averred to have been June 2, 1904, and the date of the first overt act committed in pursuance thereof being August 6, 1904, it should have been equally clear to the Commissioner and held as a matter of law that the statute of limitations applied and that the defendant should not be arbitrarily removed to Washington for trial upon void indictments.

XIII.

The alleged crime of conspiracy to bribe merged in the completed offense.

In both counts of indictment No. 26089 and in the seventh and eighth counts of indictment No. 26088, it is alleged as an overt act that the defendant Haas paid to the defendant Edwin S. Holmes, Junior, the sum of One Thousand Dollars.

Indictment No. 26089 is for conspirary to commit an offense against the United States, that is, the offense of violating Section 5451 and bribing Holmes.

The seventh count of indictment No. 26088, in which Holmes is joined as a conspirator, charges conspiracy to defraud the United States by an agreement that Holmes was to cause and procure the reports to be untrue by not following the department's sources of information.

The eighth count of indictment No. 26088, in which Holmes was also joined as a conspirator and defendant, alleges an unlawful agreement in that Holmes was to commit the offense of misconduct in office by causing and procuring the reports to be untrue as in the seventh count stated.

The averment of the overt act in indictment No. 26089 and the two counts of indictment No. 26088 is

> "And the Grand Jurors aforesaid, upon "their oath aforesaid, do further present that "further in pursuance of the said unlawful "conspiracy, combination, confederation and "agreement, and to effect the object of the "same, the said Moses Haas, on the 2nd day "of June, in the year nineteen hundred and "five, in the District of Columbia aforesaid, "unlawfully did give to the said Edwin S. "Holmes, Junior, the sum of One Thousand "Dollars."

The conspiracy to bribe Holmes has therefore been actually consummated by the act of bribing him and giving him the said sum of One Thousand Dollars.

This overt act is made applicable to both counts of the indictment so that the conspiracy to bribe merged in the specific offense of bribery at the time the money was paid to Holmes.

United States v. Biggs, 157 Fed. Rep., 264.
United States v. Black, 160 Fed. Rep., 431.

The indictment specifically charges that the conspiracy to bribe was consummated by the actual act of bribing.

As at common law, a conspiracy to commit a misdemeanor or felony was only a misdemeanor, so a conspiracy under Revised Statutes Section 5440, not being declared to be a felony, is also a misdemeanor.

Berkowitz v. United States, 93 Fed. Rep. 452.

Whereas an offense under Section 5451 is a felony.

United States vs. Jones, 5 Utah, 552.

At the common law, the technically less crime of misdemeanor was said to merge in the technically higher crime of felony, and it became an established principle that where the same criminal act satisfies the definitions of misdemeanor and felony, the misdemeanor is merged and gone, and the felony alone can be punished.

1 Bishop's Crim. Law, N. Cr. Law, Sec. 787.

1 Whart. Cr. L., 27 A.

In United States v. Me[illegible], 118 Fed. Rep., 900 Judge Bradford wrote:

> "It is well settled that a conspiracy, having
> "for its obect the commission of a misde-
> "meanor or felony, is only a misdemeanor,

"unless it be declared by statute a felony. And
" further, that a conspiracy to commit a mis-
" demeanor only is not merged in the misde-
" meanor when committed.

" The decisions are not harmonious on the
" question whether, in the absence of a statute,
" a conspiracy to commit a felony is in all
" cases merged in the consummated felony.
" Even if it be assumed that the indictment
" properly charges conspiracy to commit an
" offense under Section 5423 (U. S. Comp. St.,
" 1901, p. 3669) and that the offenses enumer-
" ated in that Section are all felonies, the fact
" remains that the indictment does not charge
" the consummation of any felony thereunder.

It will be observed that in the case at bar the indictment does charge the consummation of the felony.

It was held in United States v. Scott, 139 Fed. Rep., 697, that there was no merger because the offenses were of the same grade—both misdemeanors. Adopting the converse of the rule, where the offenses are not of the same grade, to wit: Where there is conspiracy to commit a felony and the felony is actually consummated, then the lesser crime, to-wit: the misdemeanor merges in the greater crime,, to-wit: the felony.

The Scott case, supra, clearly holds that conspiracy is a misdemeanor.

Consideration of the distinction between the punishment for conspiracy and the punishment for bribery will illuminate the argument. " Parties guilty of conspiracy," under Section 5440, " shall be liable to 'a penalty of not more than $10,000.00, " or to imprisonment for not more than two years, " or to both fine and imprisonment in the discretion " of the court."

Bribery, under section 5451, is punishable, as prescribed in section 5450, by " a fine of not more

" than three times the amount of money or value of " the thing so offered, promised, given, made or " tendered, or caused or procured to be so offered, " promised, given, made or tendered, and shall be " moreover imprisoned not more than three years."

In Am. & Eng. Ency. of Law, vol. 6, 863, the principle is thus stated:

> " A conspiracy to commit a crime of a high- " er grade than the offense of conspiracy " merges into the crime upon its execution; " when, therefore, a felony is committed pur- " suant to a conspiracy, the offense of the less- " er grade merges into one of the higher grade " and there can be no prosecution for the " former.

See also,

Thomas vs. United States, 156 F. R., 902.
Clune vs. United States, 159 U. S., 590-595.
United States v. Gardner, 42 Fed. Rep., 829.
United States v. McDonald, 3 Dill, 545.
United States v. Martin, 4 Cliff., 166.
State v. Murphy, 6 Ala., 765.
Elsey v. State, 47 Ark., 572.
Wright v. State, 5 Ind., 528.
State v. Lewis, 48 Iowa, 579.
State v. Mayberry, 48 Maine, 238.
Com. v. Kingsbury, 5 Mass., 106.
People v. Richards, 1 Mich., 222.
People v. McKane, 31 Abb. N. C., 176; 7 Misc. Rep. (N. Y.), 478.
People v. Mather, 4 Wend. (N. Y.), 229; 21 Am. Dec., 122.

" The reason," said Wallace J., in United States " vs. Gardner, 42 Fed. Rep., 831, " why a conviction " cannot be had for conspiracy to commit a felony " or for an attempt to commit a felony when it ap- " pears that the felony was actually committed, is

"that an acquittal for the minor offense would not "bar a subsequent indictment for the major, and "consequently the accused might be put twice in "jeopardy for acts which were all constitutent "parts of one offense."

As a deduction from the principle stated above, it was held in Elsey v. State, 47 Ark. 572, that an indictment for a conspiracy to commit a felony should allege that the felony was not committed. Conspiracy being a misdemeanor and bribery a felony, the punishment for each differing, and the indictment averring that the conspiracy to bribe was actually consummated by giving the money to Holmes, the misdemeanor and the conspiracy therefore merged in the felony and the completed act, so that the conspiracy is gone and the defendant should not be removed for trial upon an indictment upon which a conviction could not be sustained.

XIV.

It was error for the Court to refuse and deny the motion of the defendant to have the photographic exhibits and certain testimony relating to indictment No. 26088, which had been introduced in evidence before the Commissioner in the Price case, made a part of the record before the Circuit Court of the United States in this habeas corpus proceeding.

Theodore H. Price being joined in some of the Washington indictments as a party defendant, was also apprehended and brought before the United States Commissioner in the removal proceedings. He was committed by the Commissioner, and subsequently applied by habeas corpus to the United

States Circuit Court for his discharge from custody. His application, similar to that of the defendants Haas and Peckham, was denied and his appeal is now pending in this court as Case No. 235 (21551). While the proceedings in the cases of Price, Haas and Peckham were initiated at the same time, they were conducted before the Commissioner independently, in a measure. Certain defects, believed to be vital, having been discovered concerning indictment No. 26088, evidence oral and documentary was given concerning such defect in the Price case. While the Haas and Peckham cases were before Judge Ward awaiting his decision on habeas corpus a motion was duly made before him by the defendant Haas to add to the record to be considered by him the testimony of J. F. Brown and Samuel McHawkin, given before United States Commissioner Shields on the 10th day of December, 1908, in the proceeding then pending before said Commissioner entitled "United States v. Theodore H. Price;" and also that the photographic exhibits referred to in said testimony and offered in evidence before said Commissioner, be added to and included in the record and considered by the Circuit Court upon the application of Haas and Peckham to be discharged from custody by habeas corpus. (See Notice of Motion, fols. 788-789; and affidavit of Moses Haas, fols. 790-795). In the Haas affidavit upon which the motion was in part based, it was stated as follows:

> "It appears that the presentment of the "Grand Jury in the District of Columbia re- "lating to said indictment charged Theodore "H. Price, Moses Haas, and Frederick A. "Peckham with conspiracy to defraud the "United States and to commit an offense "against the United States. Said indictment

" is also endorsed "United States against
" Theodore H. Price, Moses Haas and Fred-
" erick A. Peckham.'

" Notwithstanding said presentment and en-
" dorsement said indictment in the body there-
" of appears to be against ' Theodore H. Price,
" ' Moses Haas, and Edwin S. Holmes, Jr.'

It further appears that in the records of the
" court said indictment was returned against
" Theodore H. Price, Moses Haas and Fred-
" erick A. Peckham, but that the name ' Fred-
" erick A. Peckham ' has been erased and the
" name of ' Edwin S. Holmes, Jr.' substituted.

" I have obtained and herewith submit upon
" this application photographic copies of the
" said presentment, endorsement and court
" records showing the charges aforesaid, which
"I hereto annex and mark exhibits 1 to 5, in-
clusive.

" I also annex hereto copy of the testimony
" of J. F. Brown and Samuel McC. Hawken
" given at the hearing before said Commission-
" er Shields in said Price matter on Decem-
" ber 10, 1908, which testimony refers to the
" records of the court in the District of Col-
" umbia and shows the method and manner
" in which said changes and erasures noted in
" the photographs aforesaid were made. Said
" testimony is referred to as exhibit 6.

" I deem it important to my rights in said
" matters concerning said alleged indictment
" No. 26088, should be called to the attention
" of the Circuit Court, and made a part of the
" proceedings in my case now pending therein,
" for the reason that I claim that said indict-
" ment No. 26088, in addition to the reasons
" previously urged against it, is illegal and
" void for the reasons herein given, and that
" the facts here stated should be considered by
" the court in arriving at its conclusions (fols.
" 792, 793, 794).

The Court will bear in mind that no decision had been made by the Circuit Judge and that although the case had been argued before him, it was being

held for his decision. As Price was a co-defendant in certain of the indictments, we cannot conceive any reason why the application to add this testimony and the photographic exhibits to the record should not have been granted. The motion to so add to the record being duly made was opposed by the United States Attorney. Judge Ward, in denying the application, wrote as follows:

> "There is a preliminary question to be considered viz: The application of the petitioner to have certain testimony, with photographic exhibits, which has been taken in another proceeding for the removal of Price for trial to the District of Columbia under indictment No. 26088, certified into and made a part of the record in this proceeding. I think such testimony, if admissible, should be taken anew and not certified in the way proposed. The United States Attorney, however, waives this objection and opposes the application on the ground that the returns to the petition have not been traversed and only issues of law have been raised. I think this objection good. Still, as I could permit the petitioner to traverse the testimony in question is material (sections 760, 761, Rev. St. U. S. (U. S. Comp. St. 1901, p. 594); Storti v. Massachusetts, 183 U. S., 138, 140, 22 Sup. Ct., 72, 46 L. Ed. 120), I may add that I do not think it so. The testimony in question shows that though indictment No. 26088 was found a true bill against Price, Haas and Holmes, and was so endorsed by the foreman of the grand jury, the caption on the back read: 'U. S. against Theodore H. Price, Moses Haas and Frederick A. Peckham.' The presentment was filed up as against the same parties. The Clerk of the Court in making his entries in the docket and in the court minutes, followed the caption on the back of the indictment. Discovering the discrepancy, he of his own motion struck out the

"name of Frederick A. Peckham in the docket
"and in the court minutes, and inserted the
"name Edwin S. Holmes, Jr., in accordance
"with the body of the bill. The caption is
"no part of the bill (Williams v. United
"States, 168 U. S., 382; 18 Sup. Ct., 92; 42 L.
"Ed., 509), and the mistake in making it does
"not alter the fact that the indictment is
"against Price, Haas and Holmes, and not
"against Price, Haas and Peckham. At all
"events, these objections concern principally
"the law and practice in force in the District
"of Columbia, and are fitter to be determined
"by the courts there than by the commission-
"er or by this Court upon the question of
"probable cause for the petitioner's commit-
"ment. The application is accordingly de-
"nied.

Haas v. Henkel, 166 Fed. Rep. 621.

The question raised constituted a vital objection to all of the indictments, but particularly to indictment No. 26088, and it was important to the rights of the defendant, in the interests of justice, that the motion should have been granted.

It is required by law in the District of Columbia that *before an indictment shall be found by a grand jury there shall have been returned a presentment* directing the prosecuting officer to submit an indictment to the grand jury. A legal presentment is made a condition precedent to a valid indictment.

See:

Act of November 3, 1722, (Colony of Maryland).
United States v. Elliott, 1 Hayward & Hazelton, 232.

As the laws of Maryland continued in force in the District of Columbia after the cession from Maryland, (see Act of February 27, 1801), it fol-

lows that the Act of November 3, 1722, was in force in the District of Columbia at the time these 1908 indictments were found.

DeForest v. United States, 11 Ap. D. C., 458-465.
Tyner v. United States, 23 Ap. D. C., 324, 358.
Kendal v. United States, 12 Pet. (U. S.) 524, 620.
American Bond and Trust Co. v. United States, 23 Ap. D. C., 535, 545.
Dangerfield v. Williams, 26 App. D. C., 508.
District of Columbia v. Robinson, 30 Ap. D. C., 283.
Graham v. Fitch, 13 Ap. D. C., 569.
Williams v. Payne, 7 Ap. D. C., 116.
United States v. Simms, 1 Cranch, (U. S.) 252.
Crawford vs. U. S., 212 U. S., 183.

An investigation of the statutes shows that this law of 1722 has never been repealed and that it is still in force. While Section 1636 of the Code of the District of Columbia, enacted in 1901, repeals all acts and parts of acts of the general assembly of the State of Maryland, the repealing force of the statute does not extent to the acts of the assembly of the *Colony* of Maryland.

Furthermore, as the act was a statute of Great Britain, Section 1 and Section 1640 of the Code of the District of Columbia expressly continued the act in full force and effect.

See also
Com. v. Knowlton, 2 Mass., 529.
Guardians of Poor v. Green, 5 Binn, 554.
Com. v. Chapman, 13 Mete. (Mass.), 68.

In the Elliott case, supra, decided in 1845, the Court said:

> "Under this law a practice has grown up "to precede indictments by presentment. This "I understand to be the uniform practice at "this day."

As the Act of 1722, above referred to, was in force on the day that these indictments were found, and as they were not preceded by a presentment and there was no order of the court directing that these matters be submitted to the grand jury, it follows that the indictments are void.

Indictment No. 26088 was also vitally defective, the defect not being based upon the endorsement upon that indictment, as argued by the United States Attorney in the Court below, but upon the substantial objection that *that indictment purporting to be against Theodore H. Price, Moses Haas and Edwin S. Holmes, Jr., was never returned by the grand jury.* If the Court will examine the photographic copies of the records of the Court and of indictment No. 26088, which are attached to the Price record upon appeal to this Court (Case No. 385—21551), the vital defect to which we are now referring will be immediately manifest. In the first place, the alleged presentment (Exhibit J) is against Theodore H. Price, Moses Haas and Frederick A. Peckham. The endorsement upon indictment No. 26088 (Exhibit J-1 and Exhibit L) shows that the indictment was found against Theodore H. Price, Moses Haas and Frederick A. Peckham; whereas in the minutes of the Court (Exhibits M and N) it appears that indictment No. 26088 was entered in the records of the Court as against Theodore H. Price, Moses Haas and Frederick A. Peckham, and that subsequently *some one erased the words "Frederick A. Peckham"* and substituted therefor the words "*Edwin S. Holmes, Jr.*"

In the body of indictment No. 26088 the defend-

aits named are Theodore H. Price, Moses Haas and Edwin S. Holmes, Jr., so that the indictment does not follow the presentment, and *the indictment as returned and entered in the minutes of the Court does not follow the indictment as found.*

The photographic exhibit N, attached to the Price record on appeal, shows that a motion was made on October 12, 1908, to amend the record, but it is not disclosed what disposition the court made of such motion.

It is therefore sought to remove the defendant Haas to the District of Columbia for trial upon four indictments concerning which the grand jury made no presentment and upon an indictment alleged to have been found against him in conjunction with Theodore H. Price and Edwin S. Holmes, Jr. (Indictment No. 26088), whereas the indictment as found and entered in the minutes of the court was against Theodore H. Price, Moses Haas and Frederick A. Peckham. His removal is thus in part sought upon an indictment which was never returned against him. This fact, having been shown to the Commissioner, deprived Indictment No. 26088 of any force whatever as evidence of probable cause, and upon being shown to the United States Judge, upon the application for his discharge by habeas corpus, also entitled the defendant Haas to be discharged. Concededly it is not the law that a man can be removed for trial upon an indictment not in fact found against him, or upon an indictment which was not the solemn act of a grand jury.

The facts concerning the presentment and the illegality of indictment No. 26088 were disclosed by the evidence of J. F. Brown and Samuel McHawkins in the Price case and were material to be considered by the Circuit Judge upon the applica-

tion of Haas for discharge by habeas corpus. No harm could possibly have come to any one from the admission of such testimony. The Government must either stand or fall upon the legality of the indictments and the fact that the evidence was already before the Court in the Price case made it competent and proper for the Court to consider it in the Haas case.

The Court was expressly authorized to receive this additional testimony in order that the ends of justice should be fully met. By Section 760 of the Revised Statutes of the United States it is provided:

> "The petitioner, or the party imprisoned "or restrained may deny any of the facts set "forth in the return, or may allege any other "facts that may be material in the case. Said "denials or allegations shall be under oath. "The return and all suggestions made against "it may be amended by leave of the Court, or "justice, or the judge, before or after the same "are filed, *so that thereby the material facts "may be ascertained.* (Italics ours).

Section 761 further authorizes the Court or justice to proceed to determine the facts of the case in a summary way—

> "And thereupon to dispose of the party as "law and justice require."

Judge Ward denied the motion upon the ground that the testimony in question was not material, adding—

> "I think such testimony, if admissible, "should be taken anew, and not certified in "the way proposed."

The Court will observe that no material benefit could have been derived from taking the testimony anew. The witnesses, J. F. Brown and Samuel

Mc. Hawkin, had been fully examined and cross-examined in the Price case before the Commissioner and the photographic exhibits had been introduced in evidence. The taking of the testimony anew or the reintroduction of the photographic exhibits would have added nothing to the situation, but would have only operated to consume the time of both Court and counsel. The evidence was given and the photographic exhibits were offered in the Price case; they were material to the issue and it was proper that the defendant Haas should have the benefit of them inasmuch as the Price cas involved the indictments against Haas. Although this motion was denied by Judge Ward, we take it that this Court will consider the evidence and the photographic exhibits in the Price case; and if the objection taken to the indictments is found to be good, this Court, in the interest of justice, will undoubtedly consider the testimony and photographic exhibits in this case and should otherwise overrule the decision of Judge Ward and receive the testimony and exhibits as a part of the record. The Revised Statutes relating to proceedings by habeas corpus seem to rest upon the proposition that the Court should have before it all of the facts of the case in order that substantial justice may be accomplished.

Indictment No. 26088, not having been returned in open court as found, is manifestly void and useless as the basis of a criminal prosecution.

Adams v. State, 11 Ind., 304.
Springer v. State, 19 Ind., 180.
Sattler v. People, 59 Ill., 68.
Gardner v. People, 20 Ill., 430.
Johnson v. State, 21 Ind., 79.
Simmons v. Com., 89 Va., 156.
State v. Compton, 13 W. Va., 852.
Felker v. State, 54 Ark., 489.

McKenzie v. State, 24 Ark., 636.
Drake v. Cochrane's Case, 6 Grat., 665.
Commonwealth v. McKinney, 8 Grat., 589.
Cawood's Case, 2 Va. Cas., 527.
Chappell v. State, 8 Yerg., 166(Tenn.)
Grove's Case, 61 W. Va., 697.

The record of the court is to the effect that indictment No. 26088 charges a criminal conspiracy to have been entered into by Price, Haas and *Peckham*. *The* indictment filed with the clerk is also endorsed as against Price, Haas and Peckham, but in the body thereof deals with a conspiracy between Price, Haas and *Holmes*. We submit that the Court cannot indulge a presumption against the defendants that the same conspiracy is referred to. It needs no argument to show that a conspiracy between Price, Haas and Peckham is not a conspiracy between Price, Haas and Holmes. The alleged amendment of the record by the clerk was likewise nullity, because the court itself could not have granted the amendment.

In Felkner v. State, 54 Ark. 489, the Court remarked.

> " It is well settled in this State that the rec-
> " ord must show a return of the indictment by
> " the grand jury; that an endorsement by the
> " clerk upon an indictment that it was filed in
> " open court, does not satisfy the requirement
> " — and that an omission in that respect can-
> " not be cured by a *nunc pro tunc* order made
> " in the absence of the defendant.

See also

State v. Squire, 10 N. H., 588.

This objection goes to the life of indictment No. 26088 and is not to be overruled as a mere technicality.

Craine v. United States, 162, U. S. 625.

We submit in conclusion upon this point:

1. That the order of Judge Ward in denying the motion to add the evidence and photographic exhibits to the record in the Haas case was error, and that the same should be considered in the record upon this appeal.

2. That the four Washington indictments not having been preceded by a valid presentment, as required by law in the District of Columbia, were void and were no evidence of probable cause in the removal proceedings.

3. That indictment No. 26088, having been found against Price, Haas and Peckham, and so entered in the minutes of the court, that the attempted amendment of the record was a nullity, and that indictment No. 26088 cannot stand as a valid indictment against Price, Haas and Holmes.

XV.

The fourth, sixth, and eighth counts of indictment No. 26088 are not, in any event, to be considered upon this appeal.

Although we have heretofore discussed all of the indictments and the various counts thereof, still the fourth, sixth and eighth counts of Indictment No. 26088 are not to be considered upon this appeal for the reason that the Government in the proceedings before the Commissioner expressly withdrew from consideration those parts of the removal complaints relating to said counts. This appears at folios 392-393 of the record as follows:

> "Mr. Dorr: The 4th, 6th and 8th counts
> "of the complaint, which is based on the 4th,
> "6th and 8th counts of the indictment known
> "as No. 26088 are withdrawn.

"Mr. Rockwood: Mr. Dorr and Mr. Adkins "say that clauses 4th, 6th and 8th of the in- "dictment —

"Mr. Adkins: No, of the complaint here.

"Mr. Rockwood: Wait a minute. Of "26088 are withdrawn?

Mr. Adkins: No, we don't. The counts of "the complaint only are withdrawn; the com- "plaint on removal.

"Mr. Rockwood: You do not withdraw the "counts of the indictment?

"Mr. Adkins: We cannot withdraw them, "because we are not proceeding on them.

"Mr. Rockwood: You withdraw the counts "of the complaint?

"Mr. Adkins: Yes.

"Mr. Rockwood: I ask why you withdraw "those counts?

"Mr. Adkins: That is our business.

"Mr. Rockwood: You decline to answer?

"Mr. Adkins: We withdraw them and that "is sufficient for the record.

"Mr. Rockwood: The District Attorney "having elected to withdraw certain counts "of indictment No. 26088 do I understand "that your Honor permits such withdrawal?

"The Commissioner: He withdraws 4, 6 "and 8.

"Mr. Rockwood: And your Honor permits "that?

"The Commissioner: Yes. . . . . .

The counts thus withdrawn from consideration averred as follows:

The fourth count of indictment No. 26088 charg ed an unlawful crime—

"To commit an offense against the United "States, that is to say the offense of miscon- "duct on the part of him, the said Edwin S. "Holmes, Junior, in his said office of associ "ate statistician in the said Department of "Agriculture."

In that Holmes was to cause and procure the said report of June 1905 to be untrue and inaccurate by causing the same to state that there had been planted in cotton throughout the United States a greater number of acres of land and that the condition of the cotton crop was better than would be shown by such report if it had been based upon the information as to said crop report obtained from the sources mentioned in the indictment and had been truly and accurately prepared; also that Holmes was to give out information in advance.

The sixth count of indictment No. 26088 charges a conspiracy to commit the offense of misconduct in office on the part of Holmes by giving out information in advance.

The eighth count of indictment No. 26088 charges conspiracy to commit an offense against the United States, that is to say, the offense of misconduct in office on the part of Holmes, to be evidenced by his alleged violation of duty in not preparing the reports accurately and in giving out information in advance.

Objection was duly made by counsel for the defendant to the withdrawal of these counts upon the ground that the warrant issued upon the removal complaint was based upon the entire complaint and not upon any particular section or count thereof, and that a withdrawal of a portion of the charge operated to withdraw it all (fols. 393, 394, 395). This objection was overruled by the Commissioner and the Government was thus permitted to withdraw the fourth, sixth, and eighth counts of indictment No. 26088. We submit that this was error and that its legal effect was to withdraw the entire removal complaint founded

upon indictment No. 26088 from consideration; but if that point shall be deemed not well taken, then, in any event, the fourth, sixth and eighth counts of the indictment No. 26088 are not to be considered by this court upon this appeal.

XVI.

There was an entire absence of probable cause before the Commissioner, and he was without jurisdiction to commit the defendants for removal to the District of Columbia, because none of the indictments sufficiently charged the defendants with having committed crime or offense against the United States, within the purview of Section 5440 R. S.

We have heretofore discussed the general propositions of law which we urge are applicable to all of the indictments. It remains now to analyze each of the indictments so that the court will readily see that the application of the rules of law contended for and the defects which we claim, deprived these indictments of any probative force before the Commissioner as evidence of probable cause.

A. INDICTMENT NO. 26086.

This indictment is not before this Court for consideration because Judge Ward declined to order removal thereupon, and the Government has not appealed. (See opinion of Judge Ward, supra).

This indictment is against Moses Haas, Edwin S. Holmes, Junior, and Frederick A. Peckham, and avers a conspiracy to defraud the United States "of and concerning its governmental function" in

the matter of issuing and publishing the cotton crop report to be issued and published by the said Department and Bureau in the then next succeeding month of June, and of its right to administer an intelligent and honest service in that behalf in the interests of the people of the United States, in that Holmes—"an officer and employe of the said "Department and Bureau, to-wit: associate statis- "tician thereof" would give information in advance of the official publication of the cotton crop report to Frederick A. Peckham, Moses Haas and Lewis Van Riper with the intention that they should speculate in cotton (fols. 250-251).

This indictment fails to charge the commission of a crime or offense against the United States, or an intent to defraud the United States, for the following reasons:

1. An illegal conspiracy "to defraud the United "States in any manner or for any purpose" is not set forth (see Point IV of this Brief).

2. It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the Government unless such custom, practice or regulation has been authorized by statute and its violation made penal by some general or special law, which facts do not appear in this case. (See Point VI of this Brief).

3. Holmes was not an officer of the United States. (See Point IX of this Brief).

4. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See Point IX of this Brief).

5. If Holmes was a public officer, as claimed by the Government, it is doubtful if an indictment will lie under Section 5440 for conspiracy, wherein the public officer is joined as a consipartor.

Section 3169 of the Revised Statutes (U. S. Comp. St. 1901, page 2059) provides a different penalty for an officer of the United States conspiring from that imposed by Section 5440 on individuals.

See Grunberg v. United States, 145 Fed. Rep. 81, where although it was held that officers might be joined with individual conspirators in an indictment under Section 5440, the court expressed considerable doubt about the proposition.

We submit that Holmes could not conspire with himself in connection with other conspirators to defraud the United States by his own act in giving out advance information. If he was a public officer and violated his duty then he was liable under Section 3169, but how can he be indicted for conspiracy when the act sought to be accomplished is an act which Holmes himself was to do? (See Point X of this Brief).

6. The facts alleged in this indictment as constituting a conspiracy were also barred by the statute of limitations. (See Point XII of this Brief).

B. INDICTMENT NO. 26087.

In this indictment Moses Haas and Frederick A. Peckham are charged with conspiring "to commit "an offense against the United States, that is to "say, the offense of promising, offering and giving "to an officer of the United States, or a person act- "ing for and on behalf of the United States, in an "official function, under and by virtue of a certain "department and office of the government thereof, "that is to say to the said Edwin S. Holmes, Juni- "or, associate statistician of the said Bureau of "Statistics as aforesaid, a sum of money which is

"to the grand jurors unknown, to induce him, the "said Edwin S. Holmes, Junior, to do certain acts "in violation of his lawful duty," in that Holmes was to give out information in advance concerning the cotton report of June 1905.

This indictment fails to charge that the information was given out by Holmes for any unlawful purpose and is further defective for the following reasons:

1st. It does not sufficiently allege an illegal conspiracy to commit any offense against the United States. (See Point III of this Brief).

2nd. It does not sufficiently allege a conspiracy to violate the provisions of Section 5451 of the Revised Statutes. (See Point III of this Brief).

3rd. It is not a violation of law, or a tender of money or anything of value, to promise or offer to give a party a certain share of speculative profits. (See Point III of this Brief).

4th. It is not a crime or offense to violate a custom, practice or regulation of a head of a department of the Government, unless such custom, practice or regulation has been authorized by statute and its violation made penal by some general or special law, which facts do not appear in this case. (See Point VI of this Brief).

5th. Holmes was not an officer of the United States. (See Point IX of this Brief).

6th. Holmes was not a person acting for or on behalf of the United States in an official function. (See Point IX of this Brief).

7th. The official function of keeping the cotton crop report secret is not imposed by law upon the Secretary of Agriculture or any one in his Department. (See Point IX of this Brief).

8th. There was no question, matter, cause or

proceeding which could by law be brought before Holmes in an official capacity in connection with the reports upon the cotton crop, or upon which his decision could be influenced. (See Point IX of this Brief).

9th. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See Point IX of this Brief).

10th. The crimes and offenses attempted to be alleged in this indictment were all barred by the statute of limitations. (See Point XII of this Brief).

11. This indictment is further fatally defective in that it does not allege that the defendants were persons not authorized to receive the information. (See Points V and VIII of this Brief.)

C. INDICTMENT NO. 26088.

FIRST COUNT.

This Count of Indictment No. 26,088 is not before this Court, because Judge Ward held that it did not charge a crime or offense and the Government has not appealed. We will, however, discuss its general provisions.

Theodore H. Price, Moses Haas and Edwin S. Holmes, Junior, are charged with conspiring "to "defraud the United States of and concerning "its Governmental function in the matter of is- "suing and publishing cotton crop reports to "be issued and published by the said Department "and Bureau in the then next succeeding month "of June, and of its right to administer an intel- "ligent and honest service in that behalf in the "interests of the people of the United States," in that Holmes was to give out information in advance to Price and Haas, who would use such information in speculating in cotton (fols. 288-289).

This count is defective for the following reasons:

1. It does not sufficiently allege an illegal conspiracy to "defraud the United States in any "manner or for any purpose," (see Point IV of this brief).

2. It is not a crime or offense to violate a custom, practice or regulation of a head of a department of the Government unless such rule or regulation has been authorized by statute and its violation made penal by some general or special law, which is not the fact in this case (see Point VI of this brief).

3. Holmes was not an officer of the United States (see Point IX of this Brief).

4. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop (see Point IX of this brief).

5. If Holmes was a public officer, as claimed by the Government, it is doubtful if an indictment will lie under Section 5440 for conspiracy, wherein the public officer is joined as a conspirator (see Point X of this brief).

6. The crimes and offenses attempted to be alleged in this count of indictment No. 26,088 were all barred by the statute of limitations (see Point IX of this brief).

D. The second count of Indictment No. 26,088.

It was held by Judge Ward that this count did not charge a crime or offense against the United States, and it is therefore removed from consideration here. It is defective as hereinafter shown. In this count it is charged:

> "That on the 15th day of November in the "year nineteen hundred and four, and continu- "ously and at all times between said 15th day "of November, nineteen hundred and four and "the fifth day of July, nineteen hundred and "five, and on said day last aforesaid, and at "the District of Columbia aforesaid, the said "Edwin S. Holmes, Jr., Theodore H. Price "and Moses Haas, unlawfully, corruptly and "fraudulently did conspire" &c., "to defraud "the United States"

in that Holmes was to give out information concerning the cotton crop in advance.

This count does not charge a crime or offense for the following reasons:

1. This count does not allege an illegal conspiracy "to defraud the United States in any "manner or for any purpose." (see Point IV of this brief).

2. It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the Government unless such custom, practice or regulation has been authorized by statute, and its violation made penal by some general or special law which is not the case here. (See Point VI of this brief).

3. Holmes was not an officer of the United States. (See Point IX of this brief).

4. There was no question at any time pending in connection with the cotton crop reports which could by law be brought before Holmes for his official decision or action. (See Point IX of this brief).

5. Holmes was not charged with any duty in connection with reports upon the cotton crop. (See Point IX of this brief).

6. If Holmes was a public officer as claimed by

the Government, he could not be joined as a co-conspirator and charged with having conspired with himself. (See Point X of this brief).

7. The crime or offense attempted to be alleged in this count was barred by the statute of limitations. (See Point XII of this brief).

8. The charge that the conspiracy continued to July 5, 1905, is manifest error because in another part of this count it is charged, as it is in all of the other indictments, that Holmes was Associate Statistician until the 9th day of June, 1905. In other words, he could not, in any event, have conspired to do the acts claimed after he was out of office and this error vitiates the entire count irrespective of any other objection to it

The charge that "on the 15th day of Novem-"ber in the year nineteen hundred and four and "continuously at all times between said 15th day "of November, nineteen hundred and four, and "the 5th day of July, nineteen hundred and "five," etc., "the defendants conspired," etc., is also void for duplicity.

This precise point was considered in United States v. Patty, 2 Fed. Rep., 664, wherein it was charged that on a certain day and on each secular day between that day and another day named, and on each secular day between that time and another specified time mentioned, the crime was committed, etc. It was held that the indictment was bad for duplicity, and Judge Dwyer wrote:

> "But, where a count in an indictment al-"leged that the defendant committed the crime "on the 20th day of September, in a year spe-"cified, and on divers other days and times "between that day and the 9th day of Decem-"ber in a subsequent year specified, it was held "to be insufficient. Here there were at least

> "two distinct days adequately set out and "whatever might be said of the rest, certainly "the allegations of neither of these could be "rejected as surplusage."

In United States vs. Biggs, 157 F. R., 264, affirmed 211 U. S., 507 (but not upon the point now being discussed) it was held that:

> "An indictment under Revised Statutes Sec. "5440, for conspiracy to defraud the United "States, which sets out a number of overt acts "on different dates, is either bad for duplicity "as charging more than one conspiracy or, if "if held to charge a single continuing con- "spiracy, the offense was consummated when "the first overt act was committed, and from "that date the statute of limitations began to "run."

It is contrary to the letter of Section 5440 and certainly contrary to the idea that conspiracy is a substantive offense, that there could be a continuous conspiracy between the 15th day of November, 1904, and the 5th day of July, 1905. If the conspiracy was entered into on the 15th day of November, 1904, then as soon as an overt act was committed to effect the object of the conspiracy, it became a completed crime, so that if there were any other unlawful conspiracies and overt acts they constituted separate offenses. We submit that the only specific allegation of this count is that the conspiracy was entered into on the 5th day of July, 1905, and at that time, concededly, Holmes was not in the Department of Agriculture, so that the allegations of this count contradicted each other, and the count does not charge a crime or offense against the United States.

9. **This count is fatally defective in that it does not charge that the defendants were persons not authorized to receive the information.** (See Point VIII of this Brief.)

E. The third count of Indictment No. 26,088.

In this count it is charged that "the said Edwin S. Holmes, Jr., the said Moses Haas and the said Theodore H. Price unlawfully, corruptly and fraudulently did conspire, combine, confederate and agree together," etc., "to defraud the United States," etc., in that Holmes was to cause and procure the report for the month of June, 1905, to be untrue and inaccurate, and also that he was to give out information in advance.

This count is defective for the following reasons:

1. The count does not sufficiently allege any illegal conspiracy "to defraud the United States "in any manner or for any purpose." (See Points IV and V of this brief).

2. It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the Government unless such custom, practice or regulation has been authorized by statute and its violation made penal by some general or special law, which is not the case here. (See Point VI of this brief).

3. Holmes was not an officer of the United States. (See Point IX of this brief).

4. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See Point IX of this brief).

5. If Holmes was a public officer, as claimed by the Government, he could not properly be

joined as a co-conspirator when the object of the conspiracy was to induce Holmes himself to commit illegal acts. (See Point X of this brief).

6. The crime attempted to be charged in this count was barred by the statute of limitations. (See Point XII of this brief).

7. This count is further fatally defective for the reason that it is not charged therein that the defendants knew or had reason to know of the alleged custom, practice, regulation or rule of secrecy of the Department of Agriculture. (See Point VII of this Brief.)

8. This count is further fatally defective in that it does not allege that the defendants were persons not authorized to receive the information. (See Point VIII of this Brief.)

F. The fourth count of Indictment No. 26,088.

This count is not to be considered upon this appeal because it was expressly withdrawn by the Government when the proceedings were pending before the commissioner. (See Point XV of this brief). It is further not to be considered because Judge Ward held that it did not charge a crime.

It is charged in this count that "Edwin S. "Holmes, Jr., the said Moses Haas and the said "Theodore H. Price unlawfully, corruptly and "fraudulently did conspire" &c., "to commit an "offense against the United States, that is to say, "the offense of misconduct on the part of him the "said Edwin S. Holmes, Jr., in his said office of "associate statistician in the said Department of "Agriculture" in that Holmes was to cause and procure the report for the month of June, 1905, to be untrue and inaccurate and was to give out advance information concerning the same.

This count is defective for the following reasons:

1. It does not sufficiently allege an illegal conspiracy to commit an offense against the United States (See Point III of this brief).

2. It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the Government unless such custom, practice, or regulation has been authorized by statute and its violation made penal by some general or special law, which is not the case here (See Point VI of this brief).

3. Holmes was not an officer of the United States. (See Point IX of this brief.)

4. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See Point IX of this brief.)

5. If Holmes was a public officer as claimed by the Government, Holmes could not be joined as a co-conspirator when the object of the conspiracy was to induce Holmes to commit the alleged crime of misconduct in office. (See Point IX of this brief).

6. The offense attempted to be charged in this count was barred by the Statute of Limitations. (See Point XII of this brief).

7. It does not sufficiently charge an illegal conspiracy to defraud the United States in any manner or for any purpose, or to cause the reports to be untrue and inaccurate. (See Points IV and V of this Brief.)

8. This count is further fatally defective for the reason that it is not alleged that the defendants knew or had reason to know of the alleged custom, practice, regulation or rule of secrecy of the Department of Agriculture. (See Point VII of this Brief.)

9. This count is further fatally defective in that

it does not allege that the defendants were persons not authorized to receive the information. (See Point VIII of this Brief.)

G. The fifth count of indictment No. 26,088.

This count is likewise removed from consideration in this appeal because Judge Ward held that it did not charge a crime.

Here again a conspiracy to defraud the United States is alleged to have been continuous from November 15th, 1904, to the 5th day of July, 1905, and the count is defective and void for the reasons hereinbefore given and urged against the second count of indictment No. 26,088. The attention of the Court is further called to the fact that the conspiracy is charged to have continued until July 5th, 1905, or a month after Holmes had ceased to be connected with the Department of Agriculture.

This count is further fatally defective in that it is not alleged that the defendants knew or had reason to know of the alleged custom, practice, regulation or rule of secrecy of the Department of Agriculture. (See Point VII of this Brief.)

H. The sixth count of indictment No. 26,088.

This count is removed from consideration here because the counsel for the Government in the proceedings before the commissioner expressly withdrew this count from consideration. (See Point XV of this brief.)

Furthermore, Judge Ward held that this count did not charge a crime and the Government has not appealed from that decision.

It is here charged that, "the said Edwin S. "Holmes Jr., the said Moses Haas and the said

"Theodore H. Price unlawfully, corruptly and "fraudulently conspired," &c., "to commit an of-"fense against the United States, that is to say, the "offense of misconduct on the part of him the said "Edwin S. Holmes, Jr., in his said office of asso-"ciate statistician in the said Department of Agri-"culture" in that Holmes was to give out information in advance concerning the report upon the cotton crop of June, 1905.

This count is defective for the following reasons:

1. It does not allege an illegal conspiracy to commit an offense against the United States. (See Point III of this brief).

2. It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the Government unless such custom, practice or regulation has been authorized by statute and its violation made penal by some general or special law, which is not the case here. (See Point VI of this brief.)

3. Holmes was not an officer of the United States. (See Point IX of this brief.)

4. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See Point IX of this brief.)

5. If Holmes was a public officer as claimed by the Government, the count is defective because as an officer of the Government he could not be joined as a fellow conspirator, when the object of the conspiracy was to procure matters to commit the alleged offense of misconduct in office. (See Point X of this brief.)

6. The offense attempted to be alleged in this count was barred by the statute of limitations. (See Point XII of this brief.)

7. This count is further fatally defective for the reason that it is not alleged that the defendants

knew or had reason to know of the alleged custom, practice, regulation or rule of secrecy of the Department of Agriculture. (See Point VII of this Brief.)

8. This count is further fatally defective in that it does not allege that the defendants were persons not authorized to receive the information. (See Point VIII of this Brief.)

I. The seventh count of Indictment No. 26,088.

In this count it is charged that "the said Edwin "S. Holmes, Jr., the said Moses Haas and the said "Theodore H. Price unlawfully, corruptly and "fraudulently did conspire" &c. "to defraud the United States" in that Holmes was to violate his duty and cause and procure the report of June, 1905, to be untrue and inaccurate.

The count is defective for the following reasons:

1. It does not sufficiently allege an illegal conspiracy "to defraud the United States in any man- "ner or for any purpose." (See Points IV and V of this Brief).

2. It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the government unless such custom, practice or regulation has been authorized by statute and its violation made penal by some general or special law, which is not the case here. (See Point VI of this brief).

3. Holmes was not an officer of the United States. (See Point IX of this brief).

4. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See Point IX of this brief).

5. If Holmes was a public officer as claimed by the government, this count is fatally defective be-

cause Holmes could not conspire with himself to procure himself to violate his lawful duty. (See Point X of this brief).

6. The alleged offense was barred by the statute of limitations. (See Point VII of this brief).

7. This count is further fatally defective for the reason that it is not alleged that the defendants knew or had reason to know of the alleged custom, practice, regulation or rule of secrecy of the Department of Agriculture. (See Point VII of this Brief.)

8. This count is further fatally defective in that it does not allege that the defendants were persons not authorized to receive the information. (See Point VIII of this Brief.)

J. The eighth count of indictment No. 26,088.

This count is likewise removed from consideration here because in the proceedings before the commissioner the counsel for the government ex-

2. It is not a crime or offense to violate a custom, practice or regulation of the head of a department of the government unless such custom, practice or regulation has been authorized by statute and its violation made penal by some general or special law, which is not the case here. (See Point VI of this brief).

3. Holmes was not an officer of the United States. (See Point IX of this brief).

4. Holmes was not charged with any duty whatever in connection with reports upon the cotton crop. (See Point IX of this brief).

5. If Holmes was a public officer as claimed by the government, he could not be joined as a fellow conspirator in a charge which had for its object an offense which he himself as a public officer was to commit. (See Point X of this brief).

6. The offense attempted to be stated here was barred by the statute of limitations. (See Point XII of this brief).

7. It does not sufficiently allege an illegal conspiracy to defraud the United States in any manner or for any purpose. (See Points IV and V of this Brief.)

8. It is further fatally defective for the reason that it is not alleged that the defendants knew or had reason to know of the alleged custom, practice, regulation or rule of secrecy of the Department of Agriculture. (See Point VII of this Brief.)

9. It is further fatally defective in that it does not allege that the defendants were persons not authorized to receive the information. (See Point VIII of this Brief.)

K. INDICTMENT NO. 26089.

FIRST COUNT.

It is here charged that "one Moses Haas and one "Theodore H. Price unlawfully did conspire &c., "to commit an offense against the United States; "that is to say, the offense of promising, offering "and giving to an officer of the United States, and "a person acting for and on behalf of the United "States in an official function under and by virtue "of a certain department and office of the govern- "ment thereof; that is to say, to the said Edwin S. "Holmes, Jr., associate statistician of the said "Bureau of Statistics, a sum of money, &c., to in- "duce him the said Edwin S. Holmes, Jr., to do "certain acts in violation of his lawful duty; that "is to say, to induce him to give out reports upon "the cotton crop in advance;" and it is charged as an overt act that on the second day of June, 1905, the said Haas gave to the said Edwin S. Holmes, Jr., the sum of one thousand dollars.

This count is defective and fails to charge a crime for the following reasons:

1. It does not sufficiently allege an illegal conspiracy to commit an offense against the United States. (See Point III of this brief).

2. It is not a crime or offense to violate a custom or practice in the Department of Agriculture or a rule or regulation of the head of a department of the Government unless such custom, practice, rule or regulation has been authorized by statute and its violation made penal by some general or special law. (See Point VI of this brief).

3. Holmes was not an officer of the United States. (See Point IX of this brief).

4. Holmes was not an officer of the United States or a person acting for or on behalf of the United States in an official function under or by virtue of any department or office of the Government thereof. (See Point IX of this brief).

5. There was no question, matter, cause or proceeding at any time pending in connection with the cotton crop reports which could by law have been brought before him in an official capacity or upon which his decision or action could be influenced. (See Point IX of this brief).

6. Holmes was not charged with any duty in connection with the reports upon the cotton crop. (See Point IX of this brief).

7. The crime attempted to be here alleged was barred by the statute of limitations. (See Point XII of this brief).

8. The alleged crime of conspiracy to bribe merged in the completed offense. (See Point XIII of this brief).

9. The Court will observe that the pleader, after setting forth the alleged unlawful conspiracy,

avers that the substantive offense of bribery was committed by the payment of $1,000 by Haas to Holmes. (See Point XIII of this brief).

This indictment is fatally defective in that it does not allege that the defendants were persons not authorized to receive the information. (See Point VIII of this Brief.)

L. The second count of indictment No. 26,089.

It is here charged that the " said Moses Haas " and the said Theodore H. Price unlawfully did " conspire, combine, confederate and agree to- " gether to commit an offense against the United " States, that is to say, the offense of promising, " offering and giving to an officer of the United " States, etc., that is, to the said Edwin S. " Holmes, Jr., Associate Statistician of the said " Bureau of Statistics, a sum of money, etc.," to induce him to violate his lawful duty and to cause and procure the report for the month of June, 1905, to be untrue and inaccurate in certain matters stated.

All of the overt acts alleged in the first count are here repeated so that the averment that Haas paid Holmes $1,000 is a part of this count.

This count is defective for all of the reasons urged against the first count of indictment No. 26,089.

This count is fatally defective in that it does not allege that the defendants knew or had reason to know of the alleged custom, practice, regulation or rule of secrecy of the Department of Agriculture. (See Point VII.)

It is further defective in that it does not allege that the defendants were persons not authorized to receive the information. (See Point VIII of this Brief.)

It is further defective in that it does not charge any illegal conspiracy to defraud the United States or to commit an offense against the United States in the matter of causing Holmes to make the reports untrue and inaccurate. (See Points IV and V.)

XVII.

IN CONCLUSION.

That Congress, during the session of 1908, enacted laws making certain of the acts set forth in these indictments a crime, is conclusive evidence that they were not previously criminal. The sufficiency of the indictments, viewed in the light of the law as it existed when the alleged crimes were committed, is one of the important propositions before this Court.

In closing this brief we cannot do better than quote the remarks of the Court in United States v. Sandefuhr, 145 Fed. Rep., 49, decided in 1906, where it is said:

> "If Congress has made the violation of this "regulation a criminal offense, the indictment "could be sustained. This has been the uni- "form ruling of the courts. United States v. "Bailey, 9 Pet., 238, 9 L. Ed. 113; United "States v. Eaton, 144 U. S., 677, 12 Sup. Ct. "764, 36 L. Ed. 591; Caha v. United States, 152 "U. S., 211, 14 Sup. Ct., 513, 38 L. Ed. 415. In "re Kollock, 165 U. S., 526, 17 Sup. Ct. 444, "41 L. Ed. 813; Cosmos v. Grany Eagle Oil "Co., 190 U. S., 301, 23 Sup. Ct. 692, 24 Sup. "Ct. 860, 47 L. Ed. 1064; Grady v. United "States, 98 Fed. 239, 39 C. C. A. 42; Van Lear

> "v. Eisele (C. C.) 126 Fed. 823. But neither "the learned district attorney nor the Court "has been able to find any statute making the "violation of this regulation a criminal offense. "*Penal statutes cannot be made to rest upon "presumptions.*" (Italics ours)

The defendants, if they are to be tried at all, are entitled to be tried in the Southern District of New York, where the Government alleged the offenses to have been committed. The indictments are fatally defective in that they fail to charge the defendants with having committed a crime or offense against the United States; the alleged criminal acts are, in any event, barred by the Statute of Limitations, and as there was a defect of jurisdiction in the proceedings, and an entire lack of probable cause, the Commissioner should have discharged the defendant Haas. It was also error for the Circuit Court, when applied to on *habeas corpus*, to remand him to the custody of the marshal.

For the aforesaid reasons it is respectfully submitted that the order appealed from should be reversed and the defendant Haas discharged.

Dated December 1, 1909.

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Counsel for the Petitioner and Appellant.

No. 367

In the Supreme Court of the United States

October Term, 1906

[redacted]

v.

[redacted]

[redacted]

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

MOSES HAAS, APPELLANT, *v.* WILLIAM HENKEL, UNITED STATES marshal for the Southern District of New York, et al.	No. 367.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

On May 25, 1908, four indictments against the appellant were found by the grand jury in the District of Columbia, two of them charging him with conspiring to defraud the United States and the other two charging him with conspiracy to commit the offense of bribery. In two of these indictments Frederick A. Peckham (appellant in No. 366) and in the other two Theodore H. Price (appellant in No. 385), are codefendants.

On June 24, 1908, two removal proceedings were instituted against the appellant Haas in the Southern District of New York. On November 30 the commissioner found there was probable cause to believe appellant guilty of the offenses with which he was charged, and orders were made committing appellant to await warrants of removal (Rec., 197). On the

same day appellant filed a petition in the Circuit Court for the Southern District of New York for writs of habeas corpus and certiorari. The writs were issued (Rec., 1, 196), and the marshal answered that he held appellant by virtue of the commissioner's warrants aforesaid (Rec., 193), and the commissioner certified to the Circuit Court a transcript of the record of the proceedings before him (Rec., 197 to 436). The return to the writ of habeas corpus was traversed upon matters of law (Rec., 194), and upon a hearing had the writs were discharged and the appellant remanded; from which order the present appeal is prosecuted (Rec., 477, 478).

On the hearing before the commissioner, appellant having admitted his identity (Rec., 256), the Government rested after introducing in evidence certified copies of the four indictments found in the Supreme Court of the District of Columbia and of bench warrants issued thereon and returned "not to be found" (Rec., 254 to 266).

To meet the case thus made appellant offered in evidence before the commissioner copies of four indictments found against him in the United States Circuit Court for the Southern District of New York on May 29, 1908 (Rec., 380 to 410), and of all the proceedings had therein, consisting, among other proceedings, of motions to quash (Rec., 421), demurrers (Rec., 416 to 420), order denying the motions to quash and overruling the demurrers and opinions thereon (Rec., 427 to 436), and orders of the said Circuit Court permitting the United States attorney

to institute the removal proceedings, notwithstanding the fact that appellant was then under bail to answer the New York indictments (Rec., 148).

Appellant also put in evidence copies of three indictments found against him in the Supreme Court of the District of Columbia, two on August 22, 1905 (Rec., 291, 306), and the other on October 2, 1905 (Rec., 321), as well as copies of two removal proceedings begun on these indictments in the Southern District of New York, one before a United States commissioner and the other before the district judge, in both of which the appellant was discharged (Rec., 353 to 386).

ARGUMENT.

Counsel for appellant have in their assignments of error raised a multitude of questions. Many of them are technical objections to the indictments, but the principal question is, of course, whether the indictments substantially charge offenses against the United States.

I.

EACH OF THE INDICTMENTS UPON WHICH APPELLANT HAS BEEN ORDERED REMOVED SUBSTANTIALLY CHARGES A CRIME AGAINST THE UNITED STATES.

The four indictments charge two sets of conspiracies. One conspiracy is alleged in indictment 26088 to have been formed between appellant Hans, the said Theodore H. Price, and one Edwin S. Holmes, jr., who occupied the office of associate statistician in the Department of Agriculture, it being charged that these three defendants conspired to defraud the United

States, the fraud to be accomplished by Holmes furnishing to his confederates information which he should officially acquire as to the contents of certain crop reports in advance of the time when these reports were published, and that as to one of these reports Holmes was to procure the making of a false report for the purpose of aiding Price's speculations in cotton; and indictment 26089 charges that Haas and Price conspired to bribe Holmes to make this false report and also to furnish to them advance information of the contents of the report.

Indictment 26086 charges that Haas and the said Peckham conspired with one Van Riper to bribe Holmes to give them advance information of the contents of the June report of 1905, while indictment 26087 charges Haas, Peckham, and Holmes with conspiracy to defraud the United States by Holmes giving his confederates this advance information.

ANALYSIS OF INDICTMENTS.

Indictment No. 26088 (Rec., 220) contains eight counts, five of which charge appellant Haas with conspiring with Price and Holmes to defraud the United States. The other counts (Nos. 1, 6, and 8) charge a conspiracy to commit the offense of misconduct in office, but as they were withdrawn before the commissioner, they are not under consideration here. The first count charges in substance:

> 1. That the United States, through the Department of Agriculture and the Bureau of Statistics thereof, has exercised the govern-

mental function of acquiring and diffusing among its people information on agricultural subjects, including cotton; that such information was acquired, among other ways, through correspondence with cotton planters, dealers, and ginners, through employees of said department, some located in different States and some making special field investigations; that the United States publishes on the 3d day of June, July, August, September, October, and December of each year, cotton reports based upon the information so acquired of the condition of the cotton crop by States, with such explanations, comparisons, and information as might be useful for illustrating that matter; that said reports were required by law to be submitted to and officially approved by the Secretary of Agriculture before being published; that under the practice and regulations of said department, established by the Secretary, all officers and employees thereof were prohibited from divulging to any unauthorized person any information acquired by him by reason of his employment or any information indicating the probable character of such report in advance of its official approval and issue.

2. That Haas, Price, and Holmes on May 31, 1905, within the District of Columbia did conspire, with divers other persons unknown, to defraud the United States of and concerning its governmental function in the matter of issuing and publishing the cotton report to be issued in the month of June next thereafter and of its right to administer an intelligent,

honest service in that behalf, the fraud to be accomplished in the manner following:

3. That said Holmes was then an officer, to wit, associate statistician of said department and bureau, and had as such officer acquired part of the information upon which said report was to be based, indicating the probable contents thereof, and before the official issue of said report would acquire other like information.

4. That Price and Haas, who were neither officers nor employees of said department or bureau, and were not authorized to know the information last aforesaid, were thereafter and in advance of the official issue of said June report to obtain from Holmes the information already known to him, and which would be acquired by him in his said capacity, it being the design of Haas, Price, and Holmes to use such information before the lawful issue of said report in speculating in cotton in view of the probable effect of the report on the market.

Said count then avers the commission of several overt acts in furtherance of this conspiracy.

The second count of this indictment also charges a conspiracy to defraud, the charge being substantially the same as in the first count, but the inducement being in substance as follows (Rec., 223):

1. In the Department of Agriculture there was a Bureau of Statistics under the management of a statistician, and that among the other officers and employees of said bureau was an associate statistician, who managed the bureau during the absence of the chief.

2. That the chief of this bureau was charged with preparing certain crop reports, each of which was required by law to embrace statements of the conditions of the crops by States, with such explanations, comparisons, and information as might be useful, and said report was required by law to be submitted to and approved by the Secretary of Agriculture before being published.

3. That each report was prepared from information collected from divers sources by said bureau, among them from correspondents of the bureau residing in those parts of the United States where the crop was grown, and certain employees of the bureau known as "statistical agents," and other traveling agents.

4. That after the report had been prepared in the Bureau of Statistics it was submitted to the Secretary, who approved it as a matter of course, relying upon the proper performance of his duty in the preparation of said report by each of the persons preparing the same.

5. That said reports were prepared at great expense for the purpose of diffusing the information among the people and were intended to be fair, impartial, and accurate, and as a matter of fact, their issue affected the market price of the crops reported upon.

6. That a custom and practice prevailed in said department, which had been established and sanctioned by the Secretary, prohibiting the giving to the public of any information collected by said bureau to be used in the preparation of any of said reports, and requiring such information to be kept secret

until the report had been published; and that it was the duty of the officers of said bureau to prepare a true and accurate report upon each crop from the information obtained as aforesaid, and without regard to the influence which the report might have upon the market.

7. That the officers of the bureau were charged with keeping secret and not divulging to anyone not connected with the bureau any information so acquired, or any information to be contained in any report until the same had been officially approved.

8. That among the crop reports were the cotton crop reports issued on the 3d day of June, July, August, September, October, and December.

9. That one Edwin S. Holmes, jr., was associate statistician of said bureau, and as such assisted in preparing said reports, or, in the absence of the statistician, was charged with preparing them, in the performance of which duty he acquired knowledge before the issue of any of said reports of the information from which they were prepared and which was to be contained therein.

10. It is then averred that Holmes, as said associate statistician, was individually charged with the duties already alleged to rest upon all the employees of the department, namely, of preparing a true and accurate report from the information obtained in the aforesaid manner, and also of not divulging any of the information acquired by him until after the report had been officially approved.

It is then charged that on November 15, 1904, and at all times until and on July 5, 1905, and within the District of Columbia, the appellant Haas and Price and Holmes conspired to defraud the United States by the following means:

> That in violation of his said duties and in advance of the official issue of each of said cotton crop reports, and at a time when the information therein contained could not lawfully be made public, Holmes should, so far as he could, furnish to Haas and Price the information to be contained therein.

The third count of this indictment, after incorporating by brief averments the inducement as set forth in the second count, avers the formation of a conspiracy on May 31, 1905, within the District of Columbia, to defraud the United States in the following way (Rec., 229):

> That in violation of his duty, Holmes, in assisting in preparing the June, 1905, report, was to procure the same to be untrue and inaccurate by causing it to state that there had been planted throughout the United States a greater number of acres of land, and that the condition of the crop was better than would be shown by such report if it had been based upon the information obtained by said bureau as to said crops; and that further, in violation of his duty, Holmes should furnish the information to be contained in this report to his confederates before its lawful issue.

The fifth and seventh counts of this indictment charge entirely different conspiracies.

That set forth in the fifth count is that Holmes, in so far as he could, would furnish to Haas and Price the information to be contained in each cotton crop report, with the aid of which information Price would speculate in cotton, closing out his deals after the report was issued, and that the profits would thereafter be divided among the conspirators (Rec., 233).

The seventh count charges the conspiracy to be that Holmes, in violation of his duty in assisting in preparing the June, 1905, report, was to cause the same to be untrue and incorrect by causing it to state that there had been planted in cotton a greater acreage than would be shown had the report been truly and accurately prepared based upon the information collected as aforesaid; and that Holmes should also cause the report to purport to show only the number of acres planted up to May 25, and that immediately upon its official issue Price should telegraph to the bureau inquiring whether the report included the acreage actually planted up to May 25, or that estimated to be thereafter planted, and Holmes should cause to be sent a reply that the report included only the acreage actually planted (Rec., 239).

Indictment No. 26089 charges Haas and Price with conspiring to commit the offense of bribery (Rec., 245).

The facts alleged in the first count of this indictment are substantially the same as those stated in

the inducement of the second count of the preceding indictment, No. 26088, but the conspiracy charged is:

> That on May 31, 1905, Haas and Price conspired to commit the offense of promising, offering, and giving to an officer of the United States and a person acting for and on behalf of the United States in an official function, under and by virtue of a certain department of the Government, to wit, the said Holmes, associate statistician as aforesaid, a sum of money, the amount of which is unknown, to induce Holmes to do certain acts in violation of his lawful duty, to wit, in advance of the official issue of said June report to furnish so far as he could to Haas and Price the matter to be contained therein, knowledge of which was acquired by Holmes in the performance of his duty as such associate statistician.

The second count of this indictment charges the offering of a bribe to Holmes for the purpose of inducing him to cause to be prepared a false and inaccurate report in June, 1905, and to furnish the information to be contained therein to the confederates in advance of the time when it could lawfully be furnished. (Rec., 251.)

The charges of these two indictments were contained in ten counts in one of the removal complaints filed against Haas (Rec., 215). The other complaint contains two counts and charges the matter which is covered by indictments 26086 and 26087 (Rec., 200).

Indictment 26086 (Rec., 202) charges Haas, Peckham, and Holmes with conspiring, on May 31, 1905, together with one L. C. Van Riper to defraud the United States. The averments of this indictment are substantially those of the first count of indictment 26088 (Rec., 220).

Indictment 26087 (Rec., 206) charges Haas and Price with conspiring, on May 31, 1905, within the District of Columbia, to commit the offense of bribing Holmes; the charge being substantially that of the first count of indictment 26089 (Rec., 245).

A.

In its compilation and issuance of cotton crop reports the Department of Agriculture was engaged in administering a governmental function.

In the fundamental act establishing the Department of Agriculture and outlining its purposes, Congress promulgated a governmental policy of diffusing among the people information as to agricultural conditions of the country. It has since consistently adhered to this policy. In this act of May 15, 1862, establishing the department, it is provided:

> SEC. 1. That there is hereby established at the seat of government of the United States a Department of Agriculture, the general designs and *duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture* in the most general and comprehensive sense of that word, and to procure,

propagate, and distribute among the people new and valuable seeds and plants.

* * * * *

SEC. 3. That it shall be the duty of the Commissioner of Agriculture to *acquire and preserve in his department all information concerning agriculture which he can obtain by means of books and correspondence*, and by practical and scientific experiments (accurate records of which experiments shall be kept in his office), *by the collections of statistics*, and by other appropriate means within his power. * * * *He shall also make special reports on particular subjects* whenever required to do so by the President or either House of Congress, *or when he shall think the subject in his charge requires it.* (12 Stat. L., 387.)

Congress, in the general appropriation act of February 25, 1863, in making provision for the new department made appropriation "*for the collection and compiling of agricultural statistics.*"

It seems that without waiting for more specific directions from Congress and under the general authority of section 3 of the fundamental act of 1862 the department in order to make its work available to the public began to issue statistical information in frequent reports. This practice Congress sanctioned in the appropriation act for the year ending June 30, 1868 (14 Stat. L., 457), in making appropriation "*for collecting agricultural statistics for annual and monthly reports.*" In the act of July 20, 1868 (15 Stat. L., 105), appropriation was made for a statistician. In 1889 a separate statistical division was created (21

Stat. L., 292). The title of the division was in 1903 changed to that of Bureau of Statistics. In 1889 the Department of Agriculture became an executive department (25 Stat. L., 659).

Congress in 1892 (27 Stat. L., 76) not only continued the sanction which the annual appropriation acts had given to the action of the department in issuing crop reports—among others the cotton crop report—but made specific provision for the contents, time, and manner of the issuance of such reports in the following language:

> Collecting agricultural statistics. Division of Statistics:
>
> Collecting domestic and foreign agricultural statistics, expenses of local investigations and compilations, and necessary traveling expenses; statistical publications furnishing data for permanent comparative records; *compiling, writing, and illustrating statistical matter for monthly, annual, and special reports*, and the necessary expenses of the same, including papers and envelopes, postal cards and postage stamps, one hundred thousand dollars. * * * *And provided further*, That the monthly crop report issued on the tenth day of each month shall embrace only a statement of the condition of the crop by States and in the United States, with such explanations and comparisons with other months and years as may be useful for illustrating the above matter, *and that it shall be submitted to the Secretary of Agriculture, who shall officially approve the report before it is issued or published.*

From this time on, including the period covered by the indictments, these provisions as to the manner and time of issuing the crop reports were repeated in each appropriation act. The act of April 23, 1904 (33 Stats., 292), making appropriations for the year ending June 30, 1905, and so particularly applying to these indictments, repeats substantially the language of the preceding appropriations acts, merely changing the dates on which the reports were to be issued to the 3d and 10th days of the month. Thereafter the general report was issued on the 10th of the month, while the cotton report was issued on the 3d of the month. The appropriations for this work steadily increased, until at the time mentioned in the indictments they annually considerably exceeded $100,000.

Congress has thus adopted as a settled governmental policy the collection and diffusion of information as to the condition of the business of agriculture. In doing this it has done no more than recognize the importance to producers, to transportation interests, to manufacturers, and to exporters of obtaining at the earliest practicable moment accurate information as to the condition of crops, which from their very nature are subject to large fluctuations. In order to minimize the evils of these inevitable fluctuations it is obviously useful that those affected should, as far as possible, be in a position to discount and prepare for the result. An elaborate machinery, as set forth in the indictment, has been constructed by the department for the collection of accurate information as to

the cotton crop. The Government has its agents in each county and township of the cotton States; it has a special list of farmers; it receives reports from the state agencies; it has its own special field corps of traveling agents. From all these sources the information is gathered in Washington, and the results compared and compiled by the statistician. The reports of the Secretary of Agriculture show in detail, as they are required to by law, the expenditures for these purposes. Congress, with these reports, and with the estimates of the Secretary before it year after year, has made appropriations for this work, and may fairly be said to have sanctioned not only its general plan, but even the particular details.

B.

To deprive the Government of this function is a fraud upon the United States within the meaning of section 5440, whether it be done by causing to be published a false report, or by collusion obtaining the information beforehand and thus preventing the publication of the report to all the people at the same time.

It is settled law that to defraud the United States within the meaning of section 5440, is not confined to pecuniary loss, but includes any act which deprives the Government of an honest administration of its affairs.

The leading case upon this subject in this court is *Hyde* v. *Shine* (199 U. S., 62). There Benson and Hyde were indicted in the District of Columbia on the charge of conspiracy to defraud the United States by obtaining school lands in California and Oregon in the names of fictitious persons and of persons not

qualified to purchase such lands, and causing the school lands so obtained to be surrendered by false and forged conveyances to the United States in exchange for so-called lieu lands. The argument was made that the United States was not defrauded, because, while it had parted with the title to these lands, it had received in exchange therefor other lands which it desired, and had, therefore, suffered no pecuniary loss. In disposing of this contention, the court said, through Mr. Justice Brown, at page 81:

> The argument that the indictments can not be sustained because the United States, having received the school lands in lieu of the lands patented, were defrauded of nothing, if valid at all, applies equally to the school lands for which the States of California and Oregon must have received a statutory compensation, fixed at $1.25 per acre. Having received this compensation it may be said, with equal propriety, that they were defrauded of nothing. The result of the scrip-out then is that, although a gross imposition was practiced upon the States, by the procuring of patents in favor of fictitious persons or of disqualified persons by the use of forged affidavits, assignments, or other documents, no indictment therefor would lie because the States had received the [illegible] consideration they could have received had the patents been issued to persons qualified under the statutes to purchase the lands. The unsoundness of this argument needs no demonstration. The States have

> a right to punish a violation of a statute enacted as part of its public policy, notwithstanding they may have suffered no pecuniary damages therefrom.
>
> The same argument applies to the United States, whose lands have been procured in plain violation of the spirit, if not the letter, of the statute, and by a further step in the same fraudulent scheme. * * *
>
> * * * * * *
>
> Whatever may be the rule in equity as to the necessity of proving an actual loss or damage to the plaintiff, we think a case is made out under this statute by proof of a conspiracy to defraud and the commission of an overt act, notwithstanding the United States may have received a consideration for the lands and suffered no pecuniary loss. (*MacLaren* v. *Cochran*, 14 Minn., 255.) The law punishes the false practices by which the lands were obtained and the question whether the Government stands in the position of a bona fide purchaser with respect to the school lands is not one which can be litigated in a criminal prosecution for a violation of law.

In the very recent case of *United States* v. *Keitel* (211 U. S., 370) the same point was raised. There the defendants were charged with conspiracy to defraud the United States of coal lands by obtaining through agents the title to more lands than the defendants could under the law procure. It was urged that there was no fraud because the Government had in each case received the price of the land.

In disposing of this contention, the court said, through Mr. Justice White, at page 394:

> The unsoundness of the argument that as when the prohibited entries were made the price of the lands was paid to the United States, therefore the United States could not have been defrauded, is refuted by its mere statement. If it were true, then in every case, however flagrant, where the lands of the United States were procured in violation of express prohibitions of law, the element of fraud would cease to exist by the mere payment of the price; that is to say, the successful operation of the fraud would deprive the transaction of its fraudulent character. But the inherent weakness of the contention need not be further pointed out, because its want of merit is conclusively established by the ruling in *Hyde* v. *Shine*, where a like contention was decided to be without foundation.

The opinion of the Circuit Court of Appeals for the First Circuit in *Curley* v. *United States* (130 Fed., 1), is most instructive upon this subject. Curley and another had been indicted for conspiracy to defraud the United States, the fraud to be committed by one of the defendants taking a civil-service examination as and for the other. It was held that this was a fraud upon the United States. The court said in the course of its opinion:

> The language of the statute in question is very broad—"if two persons shall conspire to defraud," etc. Now, it is, we think, not only

reasonable, but the duty is upon us, in considering this statute, to have in mind the object of the Government in respect to a statute of this kind, as we would have in mind the object of a statute directing itself against wrongs destructive of individual property rights. The chief aim of government being that of protection and service, it may safeguard itself against conspiracies or combinations, or acts intended to impair its proper administration, or conspiracies to impair any of the functions of the government. *It may declare it unlawful to combine for the purpose of doing any act which obstructs or interferes with the operations of government or any of its departments. The Government may unquestionably safeguard itself against being defrauded out of its rights to administer an intelligent and honest service in the interests of the people.*

As a moral offense, defrauding the Government of its right and its facilities for rendering a proper service to the people, that being the prime object for which it exists, cuts deeper than defrauding the Government of a wheelbarrow, and it is unquestionably within the power of the Government to protect itself against that kind of a fraud. The question here, therefore, is whether this statute was intended to accomplish that result, and upon that question we should take into consideration the purpose for which government exists. Under such an aspect it does not necessarily follow, as we have said, because the word "defraud" used in statutes for the protection of individual rights will be construed as having reference to property in-

> terests, that the word "defraud" as used in a statute intended for the protection of a government and its wholesome administration of its affairs in the interests of the great body of the people has reference solely to property and pecuniary interests.

And at page 10:

> The general purpose of the legislation, as well as the general intent of the statute, was to protect the Government from impositions through conspiracies to defraud or cheat. The purpose was broad enough, therefore, to include fraudulent conspiracies to injure the Government in respect to its rights and privileges, as well as in respect to its property.

A writ of certiorari was refused in that case (195 U. S., 628). Other civil-service cases are:

United States v. *Bunting* (82 Fed., 883) and *Palmer* v. *Colloday* (18 App. D. C., 426), wherein the same conclusion was reached.

Following the same principle, it was said by the Circuit Court of Appeals for the Fourth Circuit in *MacGregor* v. *United States* (134 Fed., 195):

> It surely is a wrong and a great injury to the Government when any officer or employee of one of its departments conspires with another to do an act the inevitable result of which will be *to corrupt the efficiency and impair the usefulness of such department*. To hold that such conduct would not be a fraud upon the Government and a loss to it would be as reprehensible as such conduct itself.

In *Tyner* v. *United States* (23 App. D. C., 325) it was said by the Court of Appeals of the District of Columbia:

> To defraud means not only to deprive or to withhold from one that which justly belongs to him or is due him, but also to deprive him of any right by artifice or wrong practiced upon him.
>
> * * * * *
>
> Any willful or corrupt misconduct on the part of an official of the department that operates to impair this administration works a wrong to the United States and does them some substantial injury. The injury may be pecuniary—that is to say, one whereby the public money or property may have been taken, destroyed, or expended—but it may also be one the general damages resulting from which may be most serious and far-reaching and yet not of a specific character susceptible of certain ascertainment and pecuniary compensation.

To the same effect are:

United States v. *Stone* (135 Fed., 395).
United States v. *Bradford* (148 Fed., 421).
United States v. *Morse* (161 Fed., 129).

In the recent case of *Crawford* v. *United States* (212 U. S., 183) it was said by this court, speaking through Mr. Justice Peckham:

> From this statement it appears that the count discloses the duties of the general superintendent and the duty that he owed to the Government in relation to a contract of the nature above mentioned. It was part of his

duty to give an honest and unprejudiced judgment, whether the contract was from time to time being fairly and fully complied with, both as to the number of satchels furnished, their material and workmanship, as well as with regard to all other matters pertaining to the contract. It can not be supposed that such duty could be fully, impartially, and honestly discharged by an officer who, by reason of his private and alleged corrupt agreement with the agent of the contractor whose work he was supervising, would obtain more pay by exceeding in his requisitions the number of satchels really necessary for the department. It could scarcely be believed that he would give an unbiased and honest judgment upon the question whether the contract had been fulfilled as to material or workmanship or other detail when, if the satchels were received, he would at once, though secretly, receive a certain portion of the sum paid by the department to the contractor for furnishing such satchels. This is not an indictment for the violation of a statute against bribery. It is for a conspiracy to defraud the United States, and when it is seen that the conspiracy consists in such a corrupt agreement as is alleged in the indictment, by which an officer of the United States is, in substance, to have a secret interest in a contract as to the fulfilling of which by the contractor that officer is to be the judge, it becomes unnecessary to aver that the interest was given him or the money paid to him to influence his official conduct upon the very contract in question.

See also the language used by the Court of Appeals of the District of Columbia in this same case. (30 App. Cas. D. C., 12.)

These cases clearly establish the principle that the people of the United States are entitled to an honest, orderly, and efficient administration of their public business by the public service, that the debauching of this service is a fraud against the United States, and that a conspiracy to prevent the proper administration by a department of the Government of a function intrusted to it is a conspiracy to defraud the United States within the meaning of section 5440.

In the case at bar it is averred in the indictment that it was the duty of the public servant Holmes to cause to be prepared a true and accurate report upon the data secured by the Department, and also to keep secret all information so acquired by him until the publication of the report based thereon.

Congress in making provision for the publication of cotton-crop reports, by necessary implication, provided that such reports should be accurate; and from the very nature of their employment it was the duty of those engaged in the compilation of these reports to make them honest and accurate; and they could not violate their duty more grossly than by corrupting the information which was to be published to the public into misinformation.

At the time of the publication of the reports involved in this case it will be recalled that the appropriation act of April 23, 1904 (33 Stat., 272), contained

a provision which had appeared in all of the appropriation acts since 1892, that the monthly crop reports "*shall be submitted to and officially approved by the Secretary of Agriculture before being issued to the public.*" *This was a legislative prohibition against the publication in any way, or to any person not entitled to the same, of any material part of the information contained in a report by any employee in the department before the approval thereof by the Secretary of Agriculture had been obtained.*

Furthermore, regulations made by the Secretary of Agriculture pursuant to section 161, Revised Statutes, clearly made it the duty of Holmes not to divulge any information.

On March 20, 1897, the following regulation was promulgated:

> It is hereby ordered that employees of the Department of Agriculture shall under no circumstances give out in writing or otherwise, either for the information of any individual or for communication to the public, any statement whatever relating to the business of the department without the written approval of the chief of the bureau, division, or office to which they may be assigned for duty, and by such approval the chief of the bureau, division, or office shall assume all responsibility to the Secretary for the statement approved and its publication.
>
> JAMES WILSON,
> *Secretary.*

And on December 19, 1901, the following:

> No information in regard to transactions of an official character is to be communicated to anyone not connected with the public business.

This court will take judicial notice of these regulations. *Knight* v. *United States Land Off.* (142 U. S., 161, 169).

It is insisted by appellant that the first order does not apply to Holmes, because he was associate statistician, and was therefore at times the acting head of a bureau or division; and that the second one has no application because the matters set forth in the indictments were not transactions of an official character. But these contentions are not tenable. As *associate* statistician he was not the head of a bureau or division. It is true that he was at times, in the absence of the statistician, the *acting* head; but as such he was authorized to do only such things as it would have been the duty of the statistician to perform if he had been present; and there was no rule or custom authorizing the statistician to give out any information with reference to crop reports, but by statute he was expressly prohibited from publishing the same before their approval by the Secretary of Agriculture. Moreover, the order is explicit in its terms that information could be given out only on approval of a chief of a bureau or division and not of an *acting* chief. It was a matter of such importance that it was not left to the discretion of any subordi-

nate who might for the time be acting head of a bureau in routine matters, but the *chief alone* was vested with such authority, and *even by him it should be expressed in writing.*

With reference to the order of December 19, 1901, it is perfectly clear that the receiving of information from agents as to conditions of crops, the comparing of such data, and making estimates therefrom, are transactions of an official character, within the meaning of this order. If they are not, it would be indeed difficult to determine what business transacted or labor performed in the Department does fall within that term.

Again, the existence of these duties is alleged in the indictments as a matter of fact, irrespective of any written regulation, and the indictments are sufficient evidence of their existence in this proceeding. The indictments charge:

> That the custom and practice prevailed in the Department of Agriculture, established and sanctioned by said Secretary, under which the giving out to the public of any information collected by the said Bureau of Statistics or its said officers or its said employees, to be used in the preparation of or to be contained in any of said crop reports was prohibited and the keeping of such information secret was required, except such information as was contained in said crop reports when and after the same had been officially issued and published; and that it was the duty of the officers of said bureau to prepare a true and accurate report

upon each crop from the information obtained as aforesaid and without regard to the influence which the report might have upon the market price of the crop therein mentioned. (Rec., 208, 224, 247.)

From the statutes heretofore cited it is seen that the Department of Agriculture is charged with the performance of a public service in which the people of every State, Territory, and District are vitally interested. The complete enjoyment of the benefits and advantages of this service depends largely on the integrity and efficiency of its administration, particularly by its head officers, in the city of Washington. Any willful or corrupt misconduct on the part of an official of the department that operates to impair this administration works a wrong to the United States and does it some substantial injury. The injury may be pecuniary, but it may also be most serious and far-reaching and yet not susceptible of pecuniary valuation.

One of the most prominent and useful functions of the Department of Agriculture is reporting from time to time, for the purpose of diffusing the information generally among the people of the United States, the condition of various staples. This information is acquired, as alleged in the indictment, at a very great expense to the Government; and the object of the whole system is to give fair and accurate information to the people as to the agricultural condition of the whole country.

It is gathered for no special class or particular individual, but is for diffusion generally, and constitutes a standard by which the people directly interested in the staples reported upon, as well as those less immediately affected, may gauge their business operations. And for the reason that the real object of this public service can be thereby more effectually accomplished, it is made the duty of all the officials and servants in the Bureau of Statistics to prepare honest and accurate reports, and not to purloin the material upon which the reports are to be based, for their private use or the uses of speculators.

To say, therefore, that the administration of the department is not hampered or prejudiced by the employee who hold this information in trust, conniving with outside parties to convert it to their own pecuniary advantage by preparing false reports, or by using it in grain or cotton gambling, is to limit the definition of fraud as used in section 5440, Revised Statutes, to defrauding the Government out of money or other property having a money value.

This system of crop reporting is good for [illegible] its legitimate purposes are for the benefit of the whole people; and any deceitful and unfaithful action in violation of duty by an official, whereby he makes common cause with speculators for possible winnings by cotton or the use of information lawfully acquired, is ready to be exposed to act in favor of the Government's desire to have its servants act faithfully in discharging the trust of

which the whole people are the beneficiaries. And a conspiracy of the nature described in the indictments necessarily involves a breach of trust, abuse of confidence, and deceitful practices on the part of a trusted employee, and is subversive of the real object of the above-described functions performed by the Government.

C.

A conspiracy to purchase from a venal official this advance information is a conspiracy to defraud the United States of property rights.

The information gathered at the expense of the Government from every corner of the country is studied, compared, and compiled by trained men at great expense to the Government, and is finally summed up in the figures contained in the crop report. Congress has said this report shall not be published or issued until after approval by the Secretary of Agriculture.

The property rights of the Government in this information and these figures is of the same nature as that protected by this court in the Board of Trade quotation cases. Speaking of such quotations the court said:

> In the first place, apart from special objections, the plaintiff's collection of quotations is entitled to the protection of the law. It stands like a trade secret, the plaintiff has the right to keep what it has done or paid for doing to itself. The fact that others might do similar work, if they might, does not authorize them

> to steal the plaintiff's. (Compare *Bierstein* v. *Donaldson Lithographing Co.*, 188 U. S., 239, 249, 250.) The plaintiff does not lose its rights by communicating the results to persons, even if many, in confidential relations to itself, under a contract not to make it public, and strangers to the trust will be restrained from getting at the knowledge by inducing a breach of trust and using knowledge obtained by such a breach. (*Board of Trade* v. *Christie Grain and Stock Co.*, 198 U. S., 236, 250.)

The fact that it is part of the policy of the Government to finally give this information to the public at a time set by Congress can not prevent its abstraction before that time being in fraud of its rights. A pickpocket is not privileged to take coin which a philanthropist may have decided to bestow the following day upon the poor. A prospective legatee can not pilfer a prospective bequest during the lifetime of the testator.

II.

THE COMMISSIONER COULD NOT CONSIDER THE TECHNICAL OBJECTIONS MADE TO THE INDICTMENTS, BUT IF ONE OF THEM SUBSTANTIALLY CHARGES A CRIME, HOWEVER INARTIFICIALLY, THE ORDER OF REMOVAL WAS PROPERLY MADE.

In *Beavers* v. *Henkel* (194 U. S., 73), at page 85, this court said, speaking through Mr. Justice Brewer:

> Within the spirit of the rule giving full effect to the records and judicial proceedings of other courts, an indictment, found by the proper grand jury, should be accepted everywhere through the United States as at least

> prima facie evidence of the existence of probable cause. * * * It is sufficient for this case to decide, as we do, that the indictment is prima facie evidence of the existence of probable cause.

At page 87:

> So far as respects technical objections the sufficiency of the indictment is to be determined by the court in which it was found and is not a matter of inquiry in removal proceedings. (*Greene* v. *Henkel*, 183 U. S., 249.)

In *Benson* v. *Henkel* (198 U. S., 1), at page 10, the court said, through Mr. Justice Brown:

> The extent to which a commissioner in extradition may inquire into the validity of an indictment put in evidence before him, as proof of probable cause of guilt, has never been definitely settled, although we have had frequent occasions to hold generally that technical objections should not be considered, and that the legal sufficiency of the indictment is only to be determined by the court in which it is found. (*Ex parte Reggel*, 114 U. S., 642, 650; *Roberts* v. *Reilly*, 116 U. S., 80, 95; *Horner* v. *United States*, No. 2, 143 U. S., 570, 577; *Greene* v. *Henkel*, 183 U. S., 249, 260; *Bowers* v. *Henkel*, 191 U. S., 73, 87.)
>
> Indeed, it is scarcely sound for a committing magistrate to examine closely into the validity of an indictment found in a federal court of another district, and subject to be passed upon by such court on demurrer or otherwise. Of course this rule has its limitations. If the indictment were a mere fiction

> mation, or obviously, upon inspection, set forth no crime against the United States, or a wholly different crime from that alleged as the basis alleged for the proceedings, or if such crime be charged to have been committed in another district from that to which the extradition is sought, the commissioner could not properly consider it as ground for removal.

This rule in removal proceedings is the same as in cases of interstate extradition. In *Beavers* v. *Henkel* (*supra*) cases of both kinds are cited by the court to the same effect. In the last utterance by this court in extradition cases, in *Pierce* v. *Creecy* (210 U. S., 387, 401) the court, through Mr. Justice Moody, lays down the rule as follows:

> But it will not do to disclaim the right to attack the indictment as a criminal pleading and then proceed to deny that it constitutes a charge of crime for reasons that are apt only to destroy its validity as a criminal pleading. There must be objections which reach deeper into the indictment than those which would be good against it in the court where it is pending. We are unable to adopt the test suggested by counsel, that an objection, good if taken on arrest of judgment, would be sufficient to show that the indictment is not a charge of crime. * * * The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only *whether it shows satisfactorily that the fugitive has been in fact,*

however inartificially, charged with crime in the State from which he has fled (pp. 401, 402). (Italics ours.)

III.

TECHNICAL OBJECTIONS TO THE INDICTMENTS.

Notwithstanding these objections are clearly of a technical character and should be considered only by the trial court, we will very briefly consider them.

A.

Holmes, as an associate statistician, was an officer of the United States, within the meaning of section 5451, Revised Statutes.

Indictment No. 26086 (202) charges appellant Haas and Peckham with conspiring to bribe Holmes to give them advance information of the contents of the June, 1905, report, while indictment 26089 (245) charges appellant with conspiring with Price to bribe Holmes, not only to give this information, but to cause the report to be false.

Section 5451, Revised Statutes, makes it bribery for any one to offer to give a sum of money to any officer of the United States, or to any person acting in an official function for the United States, with intent to induce such person to do an act in violation of his lawful duty, or to influence his action upon any matter which may come before him.

It is charged that Haas conspired with the others to offer Holmes, who it is alleged was an officer of and a person acting in an official function for the United States, a sum of money to induce him to do certain acts in violation of his lawful duty, to wit, to cause

the publication of a false report, and to give advance information of its contents; and to make such offer was clearly an offense under said section 5451. That section makes it an offense to bribe "any officer of the United States," or "any person acting for or on behalf of the United States in any official function." As has been shown, for the support of the Bureau of Statistics Congress has annually made appropriations. These appropriations are of two classes: First, appropriations of specific sums for the payment of named employees of the department; second, lump-sum appropriations for salaries, with the provision that no part of this sum shall be paid to persons for whom salaries have been specifically appropriated. Section 4 of the fundamental act of the department (12 Stat., 387) provides as follows:

> SEC. 4. That the Commissioner of Agriculture shall appoint a chief clerk * * * and he shall appoint such other employees as Congress may from time to time provide, with salaries corresponding to the salaries of *similar officers* in other departments of the Government.

This section is now section 523 of the Revised Statutes, and Holmes was appointed and held office thereunder.

Moreover, in the appropriation act of 1904, for the Department of Agriculture (33 Stat., 276, 292), under the head "*General expenses, Bureau of Statistics*," after making a general appropriation of $132,000 for the gathering of statistics, preparing crop reports,

etc., it was provided that not more than $50,000 of the sum appropriated "shall be expended for salaries in the city of Washington, District of Columbia," thus expressly authorizing the employment by the Secretary of Agriculture of persons imposed with the duty of gathering statistics and making out crop reports, and the payment to them of fixed salaries.

These statutes, and the appointment thereunder by the Secretary of Agriculture of Holmes to the designated position of associate statistician, with a fixed salary, met all the technical requirements to constitute an officer of the United States. (*United States* v. *Germain*, 99 U. S., 508.)

B.

If not an officer, Holmes was a person acting for and on behalf of the United States in an official function.

The two expressions as used in this statute, "officer," and "a person acting in an official function," are not synonymous. It is alleged in the indictments that Holmes was actually employed in the Bureau of Statistics in performing the duties stated, and by the statutes heretofore cited those duties were required to be performed by the Department of Agriculture. In *United States* v. *Ingham* (97 Fed., 935) the indictment charged the bribing of a secret-service operative in the Treasury Department. Judge McPherson held that the operative was not an officer of the United States, but was a person acting for and on behalf of the United States in an official function. At page 936 he said:

The phrase "official function," taken in connection with the other language of the section, is, I think, of broader scope than the defendants' counsel is willing to admit. His position is that no one can exercise an official function unless he be an "officer" of the United States; and, if this argument is to prevail, the two provisions of the section are identical in meaning, although it is clear that Congress supposed the words to be descriptive of two distinct classes of persons. This result is to be avoided if a fair and reasonable construction will lead to a different conclusion. In my opinion such a construction is obvious, and relieves the case in hand of difficulty. The "official function" spoken of is not necessarily a function belonging to an office held by the person acting on behalf of the United States; it may also be a function belonging to an office held by his superior, which function has been committed to the subordinate (whether he be also an officer or a mere employee) for the purpose of being executed. Thus, turning to the facts of the present case, it is an official function of the Secretary of the Treasury to detect and suppress certain crimes, and by his authority, lawfully exercised, the execution of this function has been (at least in part) intrusted to the secret-service operatives, who thereupon act on behalf of the United States as his subordinates or employees. The law lays the function upon him, but, as he can not do the work alone, he is, of necessity, permitted to

appoint others to share in the labor, and in this particular such appointees stand in his place.

C.

The matters with reference to which the alleged conspiracy was formed were matters which were pending or "brought before him in his official capacity," within the meaning of section 5451, Revised Statutes.

It is insisted by plaintiff in error that the statutes do not require the reports to be kept secret nor do they "impose upon the Secretary of Agriculture the specific duty of preparing a report upon the cotton crop," and therefore that such matters were not before Holmes in his capacity as an agent for the Government. But we have heretofore shown that the publication of crop reports were expressly prohibited by statute before it was approved by the Secretary of Agriculture, and that the regulations of the department made by statutory authority enjoined secrecy as to all transactions had in the department. And in the appropriation act of 1904 (33 Stat., 292) it is provided "*that the monthly crop reports* issued on the 3d and 10th days of each month shall embrace statements of the conditions of the crops, by States, in the United States, with such explanations, comparisons, and information as may be useful for illustrating the above matter." This is certainly a positive recognition of the legality of all crop reports, and necessarily includes reports made with reference to cotton crops.

But it is well settled that the duties mentioned in section 5451, Revised Statutes, are not confined to duties specifically defined by statute.

In *Benson* v. *Henkel* (198 U. S., 1), where the indictment found in the District of Columbia charged Benson with having conspired to bribe a chief of division and a clerk in the Land Office to reveal the contents of certain reports of special agents, and there was no statute forbidding the giving out of this information, nor was there even any formal departmental regulation forbidding it, this court said:

> Like comment may be made with respect to the second objection, that neither of these clerks was forbidden by any lawful authority to reveal the contents of such reports, upon the ground that there was no statute imposing such obligation. But it is clearly for the court to say whether every duty to be performed by an official must be designated by statute, or whether it may not be within the power of the head of the department to prescribe the regulations for the conduct of the business of his office and the custody of its papers, a breach of which may be treated as an act in violation of the lawful duty of an official or clerk.

On appeal to the Court of Appeals of the District of Columbia from a judgment of the trial court overruling the demurrer to this indictment against Benson, it was said, in affirming the judgment:

> If the term "lawful duty" means only a duty imposed by law, such narrow construction of this statute might cause great doubt,

> for this indictment appears to admit that neither of these officials was prohibited by a statute from revealing the contents of such reports. Despite the elaborate and ingenious arguments of defendant's counsel, we still hold, as this court has heretofore held, that every incidental yet necessary duty incumbent upon an official to perform need not be designated by statute. (27 App. Cas. D. C., 331, 345.)

In the case of *United States* v. *Macdaniel* (7 Pet., 1), the Supreme Court laid down the principle that the duties of the officers and employees of the United States are not limited by statutory provisions. The court said:

> A practical knowledge of the action of any one of the great departments of the Government must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by law; but it does not follow that he must show a statutory provision for everything he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government, would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out, and limitations imposed on the exercise of its powers, there are numberless things which must be done that can neither be anticipated nor de-

> fined, and which are essential to the proper action of the Government. Hence, of necessity, usages have been established in every department of the Government which have become a kind of common law and regulate the rights and duties of those who act within their respective limits."

In the case of *Tyner* v. *U. S.* (23 App. D. C., 324), the same court held sufficient an allegation in the indictment that it was the lawful duty of the defendant Tyner to do certain acts as Assistant Attorney-General of the Post-Office Department, though this duty was not imposed upon him by statute or written regulation, the court saying:

> We do not understand the indictment to charge this duty as arising by implication from the terms of the regulation, but as one additional thereto. The regulation as published charges the officer "with such other like duties as may, from time to time, be required by the Postmaster-General." It was not necessary that there should be an express provision of the law or the regulation promulgated by the department creating such additional duty.
>
> * * * This additional duty is not inconsistent with any provision of the law, or the regulation made in accordance therewith, but is a reasonable and natural extension of that prescribed in the latter. If, then, such additional duty was imposed in connection with the special reference of the schemes set out in the indictment or by the established usage and

practice following such orders made in cases prior thereto, the defendant was under obligation to respect and to obey it with fidelity.

D.

Indictments Nos. 26086 and 26089 sufficiently charge the intent.

The statute provides that the offer shall be made *with intent* to induce him to do an act in violation of his lawful duty, while the indictments charge that the defendants conspired to offer Holmes a sum of money *to induce him* to do certain acts in violation of his lawful duty, omitting the words "with intent." As thus used in the indictments, the words "to induce" have the same meaning as "for the purpose of inducing" or "with the intent to induce," and the words "with intent" in the statute are mere surplusage.

Again, it is settled that in indictments charging conspiracy to commit an offense, the description of the offense need not be so accurate as is required in an indictment charging the crime itself.

Tyner v. *United States*, 23 App. D. C.
Commonwealth v. *Raymond*, 99 Mass., 567.
State v. *Mohr*, 55 Iowa, 261.

E.

The bribe as alleged in the indictments was not a conditional one, and was "money or other thing of value," or a "contract or undertaking," within the meaning of said section 5451.

In all the counts charging a conspiracy to bribe, it is alleged that Haas and Price conspired to offer

Holmes "a sum of money the amount of which is to the grand jurors unknown," which is a sufficient allegation of the thing and amount offered, when the exact amount is in fact unknown to the grand jury.

The first overt act charged in indictment No. 26088 is that on June 1, 1905, within the District of Columbia, Haas offered Holmes a one-fourth share in whatever profits might be made in speculating in cotton with the information so acquired (Rec. 250). The indictment is to be tested by the language of its charging part, of which the overt acts are no part. If the charge is insufficient the indictment can not be made good by the charge of overt acts; and on the other hand, if the charging part is good, the character of the overt acts charged can not render it bad. But, if it be conceded that this overt act must be substituted in this indictment for the charge that the offer to Holmes was "a sum of money the amount of which is to the grand jurors unknown," yet the agreement described was a "contract" or "undertaking" within the meaning of the statute. The *contract* was not conditional. It was the realization of the profits under the contract that was conditional. Such an undertaking or contract was certainly valuable, although the amount of profits to be derived thereunder was speculative. It might as well be insisted that a seat on the stock exchange is not valuable. But this objection has no application to indictment No. 26089, because in that indictment, in both the charging part and in describing the overt act, it is alleged that the consideration was a sum of money,

the amount of which was to the grand jurors unknown (Rec., 238, 252).

The contention that the contract or agreement described does not fall within the statute because it was not enforceable, is hardly worthy of notice. If the contract had been lawful, it would have been enforceable, but being unlawful, its enforcement would be against public policy, and it is voidable. But the same may be said about every contract or undertaking that may be made contrary to this statute.

F.

The conspiracy charged in indictments Nos. 26086 and 26089 was not, under the allegations thereof, merged in the bribery.

The rule appears to be that a conspiracy to commit a crime merges in the crime itself only when the crime is a felony; but if both the conspiracy and the crime itself are misdemeanors, the merger does not occur.

United States v. *Scott*, 139 Fed., 697.
United States v. *Melfi*, 118 Fed., 900.

At common law neither bribery nor conspiracy was a felony, and the statutes fail to declare either of these crimes a felony, though they are both infamous offenses as that term is defined by this court. This court has decided in a number of cases (see *Bannon and Mulkey* v. *United States*, 156 U. S., 464) that a felony, within the meaning of the federal law, is one which was a felony at common law, or has been so defined by statute. The case of *United States* v. *Jones* (5 Utah, 552), cited by appel-

lant, is in accord with this proposition, because it was there held that the offense of bribery was a felony *because it was defined as such by a territorial statute.*

It therefore follows that there is no merger in this case. Furthermore, as above stated, if the offense is sufficiently declared in the principal part of the indictment, it can not be destroyed by the facts stated in a subsequent charge of overt acts.

Moreover, this objection has no application to those counts which charge a conspiracy to defraud the Government.

The foregoing questions were raised by appellant by demurrer to the indictments found against him in the Southern District of New York, and were there decided by Judge Hough against him.

(*Haas v. United States*, 163 Fed., 908; Rec., 433.)

This illustrates the wisdom of the ruling of this court that objections of this character must be left to the trial court for decision. We have the spectacle presented in this case of Haas urging the United States commissioner to hold indictments bad upon objections that have been overruled by the court.

The following technical objections were not raised before Judge Hough, but were afterwards thought of by the ingenious counsel for appellant.

6.

The indictments sufficiently charge that Haas, Price, and Peckham were not persons entitled to know the contents of the reports before their publication.

As to the counts charging a conspiracy to falsify the June, 1905, report, it is entirely immaterial whether the conspirators at the time the conspiracy

was entered into were officials of the Bureau of Statistics, or hoped to be able to assist Holmes in the criminal enterprise by themselves becoming officials and violating their lawful duty.

The objection as to the remaining counts is without merit. They vary somewhat in form, but a careful reading will show that in all except the first count of indictments, No. 26086 and No. 26088, it is alleged that it was the duty of Holmes to guard and keep secret and not to divulge to any person not employed in or connected with the Bureau of Statistics any information as to the crop reports prior to their official publication, and that the conspiracy was to be effected by the *violation of this duty of secrecy*. It being thus alleged that the revelation of the information by Holmes to Haas was to be in violation of the duty set forth, it would be clearly redundant to allege that the conspirators did not contemplate that Haas might be an officer of the department at the time when Holmes, "in violation of the said duty," was to turn the information over to him. The allegations of these counts of the indictments are certainly inconsistent with the hypothesis of innocence. If the conspirators knew of this duty and they conspired that Holmes should violate it, clearly they planned that the United States should be defrauded by that means.

In the first count of indictment No. 26088 and indictment No. 26086 it is expressly alleged that at the time the conspiracy was formed the conspirators who were to receive the contraband infor-

mation were persons unauthorized to receive it. On this state of facts, being unauthorized persons, they could only become authorized by an act of Congress or by the action of the President or the Secretary of Agriculture; that is, a power entirely beyond their own control. In this situation the indictment alleges that they agreed that Holmes, who in the course of his official duty would obtain certain information, should turn this information over to the other conspirators. Inasmuch as this agreement is absolute and not conditioned on any hypothetical action by Congress or the President or Secretary of Agriculture, the criminal intent of the conspirators is clearly established.

An agreement by which certain articles are to be brought into the United States without the payment of duties, irrespective of whether or not a possible extension of the free list to the articles in question should take place, would, we submit, be a conspiracy to defraud the United States of its customs duties; that is, persons can not lawfully agree to do an act in the future which under the circumstances existing at the time of the conspiracy would be a crime, and which will continue to be a crime except for a possible intervention of a power over which the conspirators have no control.

Further, the general charge that the defendants unlawfully and knowingly conspired, combined, confederated, and agreed together to *defraud* the United States of and concerning its governmental function in the matter of issuing and publishing its cotton crop

report must be read in connection with the succeeding paragraph in which the means are set out by which this fraud was to be effected. If the only agreement made by Haas and Peckham with Holmes was that the information should be given in the event of their being appointed to a position wherein it would be lawful for them to receive it, by no possibility could this have been an agreement to *defraud* the United States. Reading the entire charge together, the word "defraud" illuminates the succeeding paragraph, and is as much a part of it as if it had been stated specifically that it was further contemplated that at the time the information should be given it was to be given in fraud of the Government.

Suppose that an indictment should charge A, a private citizen, with having unlawfully conspired with B, the sheriff of X County, by which agreement B was to release C, a prisoner, from the county jail on the first of the subsequent month upon the written order of A, and should specify an appropriate overt act looking toward the consummation of this conspiracy. This would seem to be a good indictment for a conspiracy to effect a jail delivery, though it be not stated that A, a private citizen, did not contemplate that before the first of the succeeding month he might be nominated and elected to the position of governor, and that in this event his written order for the release of the prisoner would be a pardon and thus be perfectly legal.

I.

It is sufficiently alleged that the conspiracy was to cause the June report to be false and inaccurate.

The counts which describe this conspiracy are said to be bad, because they do not allege that the report was *actually* inaccurate, and because they do not aver that it was to be false in Holmes' judgment.

In count one of indictment 26089 it is averred that the cotton reports were to be prepared in the bureau from information collected from certain approved sources mentioned in the indictment, and that said crop reports "were to be fair, impartial, correct, and accurate" (Rec., 247), and that it was Holmes' duty as associate statistician "to prepare and assist in preparing a true and accurate report from the information as to said crops obtained as aforesaid" (Rec., 248). The same allegations are contained either by direct averment or by reference in all the other counts, except in one or two thereof, as, for instance, in count two of indictment 26088 (Rec., 224) it is averred that the reports were "to be as nearly fair, impartial, correct, and accurate as it was possible for said reports to be."

The charge of the conspiracy is that the defendants were to induce Holmes—

> in violation of his duty, to prepare and assist in preparing said cotton crop reports truly and accurately from the information obtained as aforesaid * * * unlawfully and corruptly in assisting in preparing the said cotton crop

> report which was to be issued in the month of June then next following to cause and procure said report to be untrue and inaccurate by causing said report to state that there had been planted in cotton throughout the United States a greater number of acres of land and that the condition of said cotton crop was better than would be shown by said report if it had been based upon the information as to said cotton crop obtained as aforesaid and had been truly and accurately prepared. (Rec., 252.)

It is absurd to say that this indictment is bad because it is not averred that the report when finally prepared did not state the precise number of acres which had been actually planted in cotton, for such a statement would be impossible of verification. But if the conspiracy was formed the guilt attached immediately upon the commission of any overt act, and it is not essential that its object be finally accomplished.

It clearly appears from the foregoing allegations that the conspiracy was to have Holmes *corruptly, and in violation of his duty to honestly and truly prepare a report based upon the extensive information which had been so laboriously collected*, cause to be prepared a report which was untrue and inaccurate, and this necessarily means a report which Holmes believed to be false and untrue.

J.

It is sufficiently alleged that appellant knew of Holmes's duties to keep secret the affairs of the department and to prepare the report accurately.

The objection on this point is addressed only to counts 3, 5, and 7 of indictment No. 26088 and count 2 of indictment No. 26089, except of course the misconduct counts which are not in this case.

As to the counts thus attacked, it is sufficient to say that the duties are, as we have heretofore shown, statutory ones, which the appellant is conclusively presumed to know. But the allegations of knowledge which are admittedly contained in the earlier counts of these two indictments are, as a matter of fact, incorporated by reference into these latter counts. And so long as a single good count is left, the commissioner's ruling should be upheld.

K.

The objection is made that those counts charging a conspiracy to bribe and to commit misconduct in office are bad, because Holmes could not bribe himself.

Holmes is not charged with conspiring to bribe himself or to *induce* himself to commit the offense of misconduct in office.

The latter counts are not in the case, and Holmes is not a party to indictments 26087 (206) and 26089 (245), which charge a conspiracy to bribe. Hence this argument is inapplicable. It seems to be based on the proposition that where a crime is committed which requires the joint action of two persons an indictment lies only for the substantive crime and not

for conspiracy. This is not applicable to the counts charging a conspiracy to defraud, to which Holmes is a party. The conspiracy is to make a false report; this did not require the joint act of two but was something Holmes could alone accomplish. And a conspiracy between him and others to do this act, as well as to divulge the contents of the report, is punishable. (See *Chadwick* v. *United States*, 141 Fed., 225; C. C. A.)

IV.

THERE IS NO JURISDICTIONAL DEFECT IN THE COMPLAINTS BEFORE THE COMMISSIONER.

It has been urged that the complaints before the commissioner were fatally defective for two reasons—that they were made on information and belief, and that they failed to mention the issuance of bench warrants in the District of Columbia. It is well settled that a complaint on removal proceedings may be made on information and belief. That in *Beavers* v. *Henkel* (194 U. S., pp. 73, 86), was so made and its validity sustained by this court, the court holding not only that a complaint on removal may be made on information and belief, but it is enough to base that information on an indictment without reference to a bench warrant. The reason for this is not far to seek. An indictment is evidence of probable cause for the reason that it shows that a grand jury, the body charged by the Constitution with the duty of passing on the question of probable cause, has after investigation found that there is probable cause to believe that the particular defendant has committed the offense charged. A bench warrant is merely a process of

apprehension, and can add nothing to the function of the indictment as evidence of probable cause. It is settled not only that it is unnecessary to allege the issuance of a bench warrant in the complaint before the commissioner, but it is not even necessary to produce it in evidence before the commissioner. If it must be produced at all, it is time enough to produce it when the application is made to the district judge for the issuance of the warrant of removal. (*Price* v. *U. S.*, 84 Fed., 636; affirmed 89 Fed., 81; approved in *Greene* v. *Henkel*, 183 U. S., 249, 260.)

V.

THE FACT THAT HAAS MAY BE SUBJECT TO PROSECUTION FOR THE OFFENSE WITH WHICH HE IS CHARGED IN THE SOUTHERN DISTRICT OF NEW YORK, AS WELL AS IN THE DISTRICT OF COLUMBIA, AND THAT HE HAS HERETOFORE BEEN INDICTED IN SAID FORMER DISTRICT, IS NO DEFENSE TO THESE REMOVAL PROCEEDINGS.

It is admitted by appellant that Congress has the power to provide for the removal of an accused person from one district to another, even though he be subject to prosecution in both districts, but it is insisted that when the acts of Congress are properly construed they do not authorize such removal. In this he is mistaken.

The material parts of section 1014, Revised Statutes, read as follows:

> For any crime or offense against the United States the offender may, by any justice * * * be arrested and imprisoned * * * *for trial before such court of the United States as by law has cognizance of the offense.* * * *

> And where any offender * * * is committed in any district *other than that where the offense is to be tried*, it shall be the duty of the judge of the district where such offender * * * is imprisoned seasonably to issue * * * a warrant for his *removal to the district where the trial is to be had*.

Certainly this statute makes no distinction between the removal of an accused from a district where he might be prosecuted to another district in which the prosecution may be and is actually being had and his removal thereto from any other district. Its terms are clear and can admit of no other construction than that he may be removed from any district to "*the district where the trial is to be had;*" and of course the trial is to be had in the district in which the indictment has been found.

If this contention were correct, then section 731, Revised Statutes, would mean nothing, or at any rate its enforcement would be entirely conditioned upon the option of the accused. Said section reads:

> When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, *in the same manner as if it had been actually and wholly committed therein*.

If an accused is, by virtue of this statute, subject to prosecution in two districts, according to appellant's contention he might force the Government to prosecute him in the district which he might choose

by taking up his abode therein, as by so doing he would render it impossible for the Government to procure his removal from such district into the other one. But the language that he may be "punished in either district in the same manner as if it had been actually and wholly committed therein" clearly implies that the accused stands in exactly the same position as to either of said districts, as if no part of the offense had been committed in the other one, and he be subject to prosecution alone in the district in which the indictment is found. Such being the fact, it necessarily results that he can be removed from any district, regardless of whether he was subject to prosecution for the same offense therein or not, to the district in which the prosecution is instituted.

The case of *Hyde* v. *Shine*, *supra*, is perhaps nearer in point to this question than any other. Hyde was indicted in the District of Columbia for a conspiracy which appeared to have been entered into in the northern district of California or the district of Oregon. It was alleged, however, in the indictment that the conspiracy was entered into in the city of Washington. In passing upon the question whether Hyde, under these circumstances, could be removed to the District of Columbia, the court said:

> Although it involves a seeming hardship to commit an accused person in San Francisco for trial in the District of Columbia, the terms of Revised Statutes, section 1014, are as applicable to such a case as they would be if the arrest were made in Baltimore. The section makes

> no discrimination based upon distance, and requires the commitment to be made for trial before the court having cognizance of the offense wherever that court may sit. Where the statute contains no exception the courts can not create one. Indeed, the Constitution itself requires that the trial of all crimes shall be held in the State where the crimes have been committed, and the power of Congress to order the surrender of accused persons from other States is a necessary complement to the duty of trying offenses in the jurisdiction where the crime was committed.

The court added, however, that it did not wish to be understood as approving the practice of indicting citizens of distant States in the courts of this District where an indictment would lie in the State of domicile of such person, unless in exceptional cases where the circumstances seem to demand that such course be taken.

For some offenses a prosecution may properly be instituted in any one of a number of districts, yet under appellant's contention the defendant might avoid prosecution in either unless indictments were found in all by the simple method of removing his person from one to another of these districts; and, furthermore, if three persons who reside in three separate districts were to enter into a conspiracy cognizable in either of the districts, it would be impossible to secure a joint trial of the conspirators, as neither of them could be removed from his district into either of the other districts.

The fact that indictments have already been found in the southern district of New York can not deprive the Government of its right of removal, if the case is cognizable in the District of Columbia. It is true that it can not by these proceedings postpone, over appellant's protest, a trial or other disposition of the New York cases; and an acquittal or conviction, if the accusations were the same, would be a bar, if pleaded, to a conviction under the indictments in the District of Columbia. By pressing for trial in either jurisdiction he may compel the Government to elect in which it will try, but he can not compel the Government to elect upon the district of *his* choosing. The very fact that under the law either court has cognizance of the offense, necessarily implies that the choice of the forum is with the Government, as it is the party which must institute the proceedings.

The Circuit Court for the Southern District of New York expressly waived its jurisdiction of defendant's person, which eliminates the question of comity between the courts. (*Beavers* v. *Henkel*, 198 U. S., 77; Rec. p. 447.)

VI.

THE PRIMA FACIE CASE OF PROBABLE CAUSE MADE BY THE INTRODUCTION OF THE INDICTMENT IS NOT OVERCOME OR NEUTRALIZED BY THE INDICTMENT FOUND AGAINST APPELLANT IN THE SOUTHERN DISTRICT OF NEW YORK.

It is insisted by appellant that the indictments found in the Southern District of New York show upon their face that they are for the same offenses as those described in the indictments upon which

these proceedings are based; that it is charged therein that the conspiracies were formed in the said Southern District of New York, and that therefore they furnish evidence of equal credibility with the District of Columbia indictments and neutralize the same.

This contention is not well founded for the following reasons:

1. The indictments found in the Southern District of New York are not admissible as evidence of the matters alleged therein.

The proceedings for removal of appellant to the District of Columbia *are based upon* the indictments found in the District of Columbia, and consequently said indictments, as has repeatedly been held, are admissible as evidence to show probable cause of guilt. The same reason, however, does not apply to other indictments which are wholly foreign to and disconnected from the removal proceedings. When the Government rested its case before the commissioner, it was then incumbent upon the defendant to rebut the prima facie case made out by the introduction of the indictments. This could be done only by the introduction of testimony, and such testimony must be competent under the rules of evidence which are applicable to all character of legal proceedings. It can not be insisted that the New York indictments would be admissible as *evidence of the matters alleged therein* in any character of proceedings not based upon them. The statements contained therein are only opinions of the grand jurors based upon statements made before them by witnesses, and consequently are

strictly opinion and hearsay evidence, and as such is of course incompetent. We confidently assert that no case can be found wherein indictments have been admitted when offered in a collateral proceeding as evidence of the facts recited in them.

2. If admissible, the comparative credibility of the two sets of indictments must be weighed the same as other testimony; and, as heretofore shown, the court in removal proceedings will not weigh evidence.

It is not necessarily true that the same credibility should be given to both the New York and the District of Columbia indictments. It might well be assumed that the Government, after making a very extended and careful investigation of the facts, learned that the alleged conspiracies were formed in the District of Columbia and not in the city of New York, as was at first believed. The credibility of each indictment must depend upon the number and character and extent of knowledge of the witnesses introduced before the grand jury, but there is nothing in this record to indicate upon what evidence the New York indictments were found, the record being wholly silent as to the number or names of the witnesses before that grand jury. In fact, there is nothing to indicate that any witnesses were there called, except the assumption that the grand jury would not pass an indictment without some evidence.

These considerations further show the impropriety of considering the recitals of the New York indictments as evidence of the facts therein stated.

3. The New York indictments, if admissible, show that appellant is subject to prosecution in the District of Columbia, as well as in the Southern District of New York.

While it is alleged in the New York indictments that the conspiracy was formed in the Southern District of New York, yet in describing the overt acts in indictment No. 26089, it is alleged that in pursuance of the conspiracy Haas journeyed from New York to the District of Columbia, and that on June 1, 1905, *in the District of Columbia*, he unlawfully offered to give Holmes, then an officer of the United States and a person acting on behalf of the United States in an official function, a sum of money, the amount of which was to the grand jurors unknown, to induce him, in violation of his duty, and in advance of the official issue of the June crop report, to furnish Haas and Price the information to be contained therein; and that on June 2, 1905, said Haas, *in the District of Columbia*, gave to Holmes the sum of $1,000. (250, 251.)

This court has not yet finally decided whether one may be indicted for a conspiracy in the district in which the overt acts were committed, when the conspiracy was formed in another district, but we insist that the great weight of authority supports that view. (*Hyde* v. *Shine*, 199 U. S., 76, and cases cited.) Whatever view this court may finally take upon this question, it will certainly not, in these collateral proceedings, and when presented in this way, consider and finally pass thereon.

4. A conspiracy might be formed both in New York and in Washington, and an indictment found in either, and the venue of such conspiracy might truthfully be laid in either of said districts.

Suppose this conspiracy had been formed by telephone with Price in New York and Haas and Holmes in Washington. Could not the indictment be properly found in either of the districts? Again, suppose a tentative conspiracy had been begun in New York between Price, Haas, and Holmes, but was finally consummated in the District of Columbia; would not such conspiracy fall within the provisions of section 731, Revised Statutes, wherein it is provided that an offense begun in one district and completed in another may be prosecuted in either?

5. From a comparison of the New York and District of Columbia indictments, it will appear that the Washington indictments charge two conspiracies which are nowhere directly or indirectly referred to in any of the New York indictments.

This is, in itself, sufficient to dispose of the argument of appellant. The New York indictments charge in various counts a conspiracy between Haas, Price, and Holmes to cause the June, 1905, crop report to be inaccurate, by having it show a larger acreage of cotton planted and a better condition of the crop on the 25th of May preceding than actually existed, and also charge the divulgence of the contents of the report.

The Washington indictment, No. 26088, contains eight counts, and the corresponding New York indictment, No. 308, contains but three counts, which are similar to the first three counts of the Washington indictment. The fourth, sixth, and eighth counts of the Washington indictment have been laid out of the case because removal was not sought upon them, so that the charges of the fifth and seventh counts of this indictment are not anywhere found in the New York indictments. The fifth count charges a conspiracy formed November 15, 1904, and continued up to and including July 5, 1905, the object being to defraud the United States by means of the following scheme:

That Holmes would furnish to Haas and Price the information to be contained in each crop report; and whenever such information should be furnished Price, he, before the publication of the report, would engage in buying or selling cotton, as the case might be, and after the report had been finally published, Price would then sell or buy the cotton theretofore handled, thereby making large profits which would be divided among the conspirators; and among the overt acts charged as having been committed pursuant to this conspiracy, it is alleged that Price, after receiving the information from Holmes, through Haas, did speculate, with its aid, realizing the sum of $750,000, of which he gave Haas the sum of $125,000 (233 to 236).

The seventh count of this indictment charges an entirely different conspiracy with reference to the June report of 1905, to wit:

In violation of his duty to assist in preparing true and accurate reports, Holmes was to cause the report to be prepared to show the number of acres actually planted in cotton only up to the 25th of May preceding, and as soon as the report should be published Price was to telegraph to the bureau inquiring whether the report included the acres actually planted up to May 25, or whether it also included the acres which it was estimated were thereafter to be planted, and Holmes was to cause a reply to be sent that the report included only the acreage planted to May 25.

The overt acts here charged, which are nowhere else mentioned in any of the indictments, are that on June 2, 1905, at Washington, Haas paid Holmes $1,000; that on May 23, 1908, at New York, Price promised Holmes a large sum of money, the amount of which is unknown, which sum Price gave to Holmes on May 25, 1908 (Rec., 239 to 242).

These allegations which appear in the District of Columbia indictments and not in the New York indictments can not be, of course, offset or neutralized by the recitals of the New York indictments.

VII.

THE RECORD DOES NOT SHOW THAT THE OFFENSE CHARGED IS BARRED BY THE STATUTE OF LIMITATIONS.

The appellant offered before the commissioner certified copies of the 1905 indictments and insists that on the face of these and of the present indictments it appears that the offenses charged in the two sets of indictments are the same; that the offense began as early as 1904, and that, therefore, this bar appears on the face of the indictments.

Before discussing this question we especially call the court's attention to the fact that this objection is one which can be made only in the trial court. *Pierce* v. *Creecy* (210 U. S., 387, 402). But if the court should in these proceedings consider the same the contention can not be sustained for the following reasons:

1. For the reasons heretofore assigned the indictments found in 1905 are not admissible as evidence of the matters therein recited.

2. Again, it appears from these 1905 indictments and the removal proceedings thereunder that appellant Haas and his coconspirator Peckham are fugitives from justice in the District of Columbia, and that the statute has not therefore run in their favor.

Section 1045, R. S. U. S.

Streep v. *U. S.*, 160 U. S., 128.

In re Bruce, 132 F., 390; 136 F., 1022.

Howgate v. *U. S.*, 7 App. Cas. D. C., 217, 242.

3. Unless the defense is applicable to each count of the four Washington indictments it can not avail here. The Washington indictments of 1905 relate solely to a conspiracy of Haas with Peckham, Van Riper, and Holmes.

It was only in the grand jury investigations of 1908 that the Government secured sufficient evidence to procure indictments against Haas for his independent conspiracy with Price and Holmes. The defense, then, is inapplicable to the indictments dealing with the Haas-Price conspiracy Nos. 26088 and 26089. It is also inapplicable to the Haas-Peckham indictment No. 26087, which charges a conspiracy to bribe, for no such charge was made against the defendant in the 1905 indictments.

4. Even as to the Haas-Peckham indictment No. 26086, the defense rests on an obvious *non sequitur*. The 1905 indictments charge the *existence on June 2, 1904*, of a conspiracy to secure advance information as to the cotton-crop reports to be issued in *1904*. Indictment No. 26086 charges the existence on *May 31, 1905*, of a conspiracy to secure advance information solely as to the June, 1905, report. It is, of course, a complete *non sequitur* to argue that if A, B, and C made a conspiracy in June, 1904, as to the various reports in 1904 they could not thereafter in *May, 1905*, make a new conspiracy of a similar character as to the June, 1905, report.

Further, the whole argument of the defendant on this point rests on a misconception of what the crime

of conspiracy is. From its very nature, it is a continuing offense. The corrupt agreement is the crime, the requirement that there be an overt act merely affording a time for repentance.

U. S. v. *Britton*, 108 U. S., 199.

On the doing of the overt act the corrupt agreement immediately becomes punishable, and so long as the corrupt agreement continues in existence so long the offense continues to exist and to be punishable until either the object contemplated by the conspirators is effected or abandoned.

U. S. v. *Bradford*, 148 Fed., 413; writ of certiorari denied, 206 U. S., 563.

Ware v. *U. S.* (C. C. A.), 154 Fed., 577; writ of certiorari denied, 207 U. S., 588.

Jones v. *U. S.* (C. C. A. 9th Ct.), 162 Fed., 417.

5. The appellant urges that in addition to the 1905 indictments the court should consider the testimony of Lewis C. Van Riper given on the trial of Holmes on those indictments. This testimony was not before the commissioner but forms Exhibit 11 to the petition for this writ. (Rec., 14 to 193.)

This testimony is hearsay in this case and can have no evidenciary value. But if it could be considered it does not support appellant's contention; on the contrary, it shows that the conspiracy with reference to the report of June, 1905, is not that mentioned in the early indictments.

It appears from this testimony that Van Riper was introduced to Holmes by Peckham in the summer of

1904 and negotiations were immediately opened by which Holmes was to disclose to Van Riper, Haas, and Peckham for their use in speculation advance information as to the cotton crop reports, and that Haas had since 1903 acted as go-between for Holmes and Price, between whom a similar currupt arrangement existed. The better to carry on their enterprise a brokerage firm was organized by the Haas-Peckham-Van Riper group of conspirators. Trading on their advance information as to the report of December 3, 1904, the conspirators made and divided a profit of some $166,000. The methods used, however, involved some risk to Holmes and Haas, who objected on the ground that Price took care of them without risk on their part in exchange for the same information, and in December, 1904, the original Haas-Peckham-Van Riper conspiracy terminated. It had proved too lucrative to all concerned, however, to be dropped without efforts to renew it. During the winter and spring of 1905 it appears efforts were made by Price and others to get Hyde, the chief statistician, out of the bureau and to put Holmes in his place for the purpose of being the better able to manipulate the figures of the reports and to falsify them if desirable. This plan failed. The approach of the issuance of the June report again whetted the appetite of the conspirators. Haas, Holmes, and Van Riper in the last days of May again got together. At the same time Price, it appears, found himself heavily on the wrong side of the market, and the only thing that could save

him, it seemed, would be to make the report false and inaccurate, and this he arranged with Holmes through Haas to do. The conflicting interests of the conspirators finally led to the discovery of the crime.

VIII.

THE COURT DID NOT ERR IN EXCLUDING AS EVIDENCE THE COPIES OF CERTAIN RECORDS; BUT IF ADMISSIBLE SAID RECORDS AFFORD NO DEFENSE TO THESE PROCEEDINGS.

On the hearing before the Circuit Court appellant offered as evidence copies of the records of the Supreme Court of the District of Columbia relating to the indictments found there and showing the minute and docket entries relating thereto. On objection the court held said copies to be inadmissible; and it is now urged that in this the court was in error, and that said records show a valid defense to these proceedings (Rec., 453 to 471).

This contention can not be maintained for the following reasons:

1. No exceptions were taken by appellant to the action of the court in refusing to admit said records as evidence.

2. Appellant's traverse to the return on the writ set up specifically the matters relied upon by him, all of which are questions of law, and neither of which embraces the question sought to be presented by said evidence.

3. The questions sought to be raised by said evidence are for the trial court, and can not be consid-

ered in these collateral proceedings (*Greene* v. *Henkel*, *supra*).

4. It is not necessary that the indictments be preceded by presentments, but if it were, there is nothing in this record to show that there were no presentments.

(*a*) A copy of each of the indictments duly certified by the proper officer of the Supreme Court of the District of Columbia, and under its seal, has been placed in evidence; whether such indictments were preceded by presentments does not appear in the evidence, and the court must presume, therefore, that if such presentment is necessary, it exists.

(*b*) Appellant relies upon an act of the assembly of the Province of Maryland passed November 3, 1722, entitled "An act to regulate prosecutions in criminal cases," which act reads as follows:

> *Be it enacted, etc.*, That from and after the publication hereof no attorney-general or clerk of the peace or of indictments shall exhibit any bills or bill of indictments to any grand jury against any person whatever without an express order from *the governor and council* (*a*) or from the court where the prosecution is to be, or some one of the justices of such court, or that the grand jury find or make a presentment of the offense of their own knowledge, upon penalty of paying the party grieved all the damages and charges that shall be occasioned by such presentment, any law, usage, or custom to the contrary notwithstanding.
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> (Vol. 1, Kilty's Laws of Maryland.)

Appellant also cites *United States* v. *Elliott* (1 Haywood & Hazleton, 232) in support of his contention. In that case the presiding judge stated that the practice had grown up in the District of Columbia to precede indictments by presentment; but this was far from holding that an indictment without presentment is invalid, and, moreover, the declaration of the judge was but a *dictum*.

The law has been otherwise settled by local decisions. In *United States* v. *Tompkins* (2 Cranch C. C., 246) the court refused to quash an indictment where there had been no previous presentment or order of the court. In *Thompson* v. *United States* (30 App. D. C., 352) the Court of Appeals affirmed a judgment holding bad a plea in abatement filed on the ground that there had been no presentment. And the law generally has been settled by this court in the recent decision of *Hale* v. *Henkel* (201 U. S., 43). There it was urged that a federal grand jury had no right to consider a case until a formal charge had been laid before it. This court, at page 65, in disposing of this proposition, said:

> We deem it entirely clear that under the practice in this country at least the examination of witnesses need not be preceded by a presentment or indictment formally drawn up, but that the grand jury may proceed, either upon their own knowledge or upon the examination of witnesses, to inquire for themselves whether a crime cognizable by the court has

been committed; *that the result of their investigations may be subsequently embodied in an indictment.*

The case of *Blaney* v. *State* (74 Md., 153, 155) settles that the act of 1722 was never understood in Maryland as making a presentment essential to the validity of an indictment; in this case it is stated that the law in Maryland, at least since the Revolution, has been in accordance with the rule as laid down by this court in *Hale* v. *Henkel, supra.* This law was carried into the District of Columbia when it was carved out of Maryland. (Act February 27, 1801, 2 Stat. L., 103.)

(*c*) The Maryland act of 1722, if ever in force in the District of Columbia, has been repealed.

Sections 1 and 1636 of the Code of Laws of the District of Columbia, which became law on January 1, 1902, read as follows:

> SECTION 1. The common law, all British statutes in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, the principles of equity and admiralty, all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act shall remain in force except so far as the same are inconsistent with, or are repealed by, some provision of this code.

> SECTION 1636. All acts and parts of acts of the general assembly of the State of Maryland, general and permanent in their nature, all like acts and parts of acts of the legislative assembly of the District of Columbia, and all like acts and parts of acts of Congress applying solely to the District of Columbia in force in said District on the day of the passage of this act are hereby repealed.

It is urged that this Maryland act is in force under section 1 of the code because it was a "British statute."

The expression "British statute" has for several generations been used in Maryland and in the District of Columbia as meaning only acts of Parliament, and not as including any of the acts of the general assembly of Maryland. In 1870 Mr. Alexander, of Baltimore, published a collection of "British statutes in force in Maryland according to the report thereof made to the general assembly by the late Chancellor Kilty, with notes and references to the *acts of assembly*," etc.

It is clear, therefore, that Congress used this expression in this same sense, as otherwise there is no reason for the use of the expression "British statutes" in sections 1 and 1640 of the code and the expression "acts of the general assembly" in section 1636.

Again, it is urged that section 1636 does not repeal the act of 1722 because it is an act of the assembly of the *Province* of Maryland, while the statute refers only

to acts of the assembly of the *State* of Maryland. But the expression "State of Maryland" includes all acts passed by the assembly of Maryland, whether of the Province or of the State, prior to February 27, 1801, the date of the first act for the government of the District of Columbia (*supra*). Maryland being then a State, her assembly was properly described as the "assembly of the State." This conclusively appears from the introduction to volume 1, Kilty's Laws of Maryland, wherein the following is quoted from resolutions passed at the November session, 1798, of the general assembly of Maryland:

> *Resolved*, That William Kilty be, and he is hereby, appointed to revise the acts of the assembly of this *State*, and to prepare an edition thereof including all public acts now in force in the order in which they passed *from the year 1692* till the end of the present session, inclusive.

(*d*) *The act of 1722 does not render invalid an indictment found without a presentment.*

This statute simply provides that no attorney-general or clerk shall exhibit any bills of indictments to any grand jury, without an express order, etc., "upon penalty of paying the party grieved all the damages and charges," etc. While, therefore, it renders the person who violates it liable to a civil suit to the person injured, yet it does not render invalid any indictment so found.

(*e*) The objection that indictment No. 26088 is not good against Haas, Price, and Holmes, because it is

indorsed upon the back as against Haas, Price, and *Peckham* instead of *Holmes*, is not well taken.

This court held in *Williams* v. *United States* (168 U. S., 382), that an indorsement is no part of an indictment. Even if there were anything in this objection, the point is one which can be made only by Holmes. Both Haas and Price are charged upon the back and in the body of the indictment with conspiring to defraud the United States, and the mere fact that the name of their coconspirator was omitted from the back can not possibly invalidate the indictment so far as they are concerned.

For the foregoing reasons it is insisted that the action of the court below should be affirmed.

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